

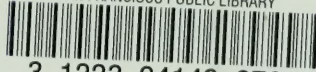
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CHARTER

OF THE

City and County of

San Francisco

Adopted March 26, 1931, in effect January 8, 1932



Published by
Authority of the Board of Supervisors
John R. McGrath, Clerk of the Board

CHARTER

of the

City and County of

San Francisco

adopted March 27, 1849, and amended to and by the



HISTORY OF CHARTER LEGISLATION

The Charter was ratified by vote of the People on March 26, 1931; ratified by the Legislature of the State April 13, 1931; in effect at twelve o'clock noon January 8, 1932.

Charter Amendments

<i>Section Amended</i>	<i>Section Added</i>	<i>Date of Election</i>	<i>Date Ratified</i>
5		November 4, 1941	December 22, 1941
	5.1	November 4, 1952	January 9, 1953
7		November 8, 1932	January 5, 1933
do		November 7, 1950	January 22, 1951
do		November 6, 1951	March 10, 1952
do		November 5, 1957	February 5, 1958
8		November 6, 1945	January 15, 1946
9		November 3, 1942	January 11, 1943
do		November 8, 1955	March 7, 1956
do		November 8, 1960	February 2, 1961
10		June 5, 1956	January 11, 1957
11		November 6, 1934	January 22, 1935
do		November 2, 1948	January 7, 1949
do		November 8, 1949	December 15, 1949
12		November 4, 1947	March 8, 1948
13		November 6, 1934	January 22, 1935
do		November 4, 1952	January 9, 1953
	13.1	November 8, 1949	December 15, 1949
16		May 2, 1935	May 13, 1935
do		November 8, 1955	March 7, 1956
17		November 4, 1952	January 9, 1953
24		March 9, 1937	April 6, 1937
	24.1	June 3, 1958	January 14, 1959
25		November 4, 1947	March 8, 1948
do		November 8, 1960	February 2, 1961
	26.1	November 4, 1947	March 8, 1948
	34.1	November 7, 1944	January 16, 1945
	34.2	November 5, 1957	February 5, 1958
34.1		November 8, 1949	December 15, 1949
35		March 9, 1937	April 6, 1937
do		November 3, 1942	January 11, 1943
do		November 2, 1948	January 7, 1949
do		November 4, 1958	January 14, 1959
	35.1	November 3, 1942	January 11, 1943

<i>Section Amended</i>	<i>Section Added</i>	<i>Date of Election</i>	<i>Date Ratified</i>
	35.2	November 3, 1942	January 11, 1943
	35.3	November 3, 1942	January 11, 1943
35.3		November 4, 1947	March 8, 1948
do		November 6, 1956	January 11, 1957
do		November 6, 1962	January 15, 1963
	35.4	November 3, 1942	January 11, 1943
35.4		November 2, 1948	January 7, 1949
do		November 4, 1958	January 14, 1959
	35.5	November 3, 1942	January 11, 1943
35.5		November 6, 1945	January 15, 1946
do		November 5, 1946	January 7, 1947
do		November 4, 1947	March 8, 1948
do		November 2, 1948	January 7, 1949
do		November 7, 1950	January 22, 1951
do		November 5, 1957	February 5, 1958
do		November 6, 1962	January 15, 1963
	35.5½	May 16, 1944	June 9, 1944
35.5½		November 5, 1946	January 7, 1947
do		November 4, 1947	March 8, 1948
do		November 8, 1949	December 15, 1949
	35.5.1	June 3, 1952	August 7, 1952
	35.5.2	November 5, 1957	February 5, 1958
	35.5.3	June 5, 1962	June 29, 1962
	35.5.4	November 6, 1962	January 15, 1963
	35.6	November 3, 1942	January 11, 1943
	35.7	November 3, 1942	January 11, 1943
	35.8	November 3, 1942	January 11, 1943
35.8		November 6, 1956	January 11, 1957
	35.8.1	June 3, 1958	January 14, 1959
	35.9	November 3, 1942	January 11, 1943
	35.10	November 3, 1942	January 11, 1943
	35.11	November 3, 1942	January 11, 1943
	35.12	November 3, 1942	January 11, 1943
	35.13	November 3, 1942	January 11, 1943
36		November 7, 1939	February 8, 1940
do		November 3, 1942	January 11, 1943
do		November 6, 1945	January 15, 1946
do		November 5, 1946	January 7, 1947
do		November 4, 1947	March 8, 1948
do		November 7, 1950	January 22, 1951

<i>Section Amended</i>	<i>Section Added</i>	<i>Date of Election</i>	<i>Date Ratified</i>
36		November 8, 1955	March 7, 1956
	36.1	May 16, 1944	June 9, 1944
	36.11½	November 4, 1947	March 8, 1948
36.11½		November 7, 1950	January 22, 1951
	36.2	May 16, 1944	June 9, 1944
36.2	(repealed)	November 6, 1945	January 15, 1946
	36.2	June 3, 1952	August 7, 1952
	36.2.1	June 5, 1962	June 29, 1962
38		November 3, 1953	March 5, 1954
	38.01	November 4, 1952	January 9, 1953
	38.1	November 3, 1942	January 11, 1943
	38.2	November 5, 1946	January 7, 1947
	38.3	November 3, 1953	March 5, 1954
40		November 5, 1940	January 21, 1941
do		November 8, 1949	December 15, 1949
41		November 8, 1949	December 15, 1949
do		November 4, 1958	January 14, 1959
	41.1	November 2, 1948	January 7, 1949
42		November 3, 1942	January 11, 1943
do		November 7, 1944	January 16, 1945
do		November 8, 1949	December 15, 1949
do		November 8, 1960	February 2, 1961
	42.1	November 8, 1960	February 2, 1961
	42.2	November 8, 1960	February 2, 1961
	42.3	November 8, 1960	February 2, 1961
	42.4	November 8, 1960	February 2, 1961
43		November 5, 1940	January 21, 1941
do		November 7, 1961	February 13, 1962
45		November 3, 1959	February 3, 1960
47		March 9, 1937	April 6, 1937
48		March 9, 1937	April 6, 1937
	48.1	March 9, 1937	April 6, 1937
50		November 3, 1942	January 11, 1943
do		June 3, 1952	August 7, 1952
51		November 3, 1942	January 11, 1943
do		November 4, 1947	March 8, 1948
52		November 7, 1944	January 16, 1945
do		November 6, 1945	January 15, 1946
do		November 4, 1947	March 8, 1948
53		November 2, 1948	January 7, 1949

<i>Section Amended</i>	<i>Section Added</i>	<i>Date of Election</i>	<i>Date Ratified</i>
56		November 2, 1948	January 7, 1949
59		November 7, 1961	February 13, 1962
60		November 4, 1947	March 8, 1948
61		November 2, 1948	January 7, 1949
do		June 7, 1960	January 12, 1961
	61.1	March 9, 1937	April 6, 1937
62		November 6, 1945	January 15, 1946
65		November 6, 1934	January 22, 1935
69		November 6, 1934	January 22, 1935
do		November 5, 1946	January 7, 1947
do		November 4, 1947	March 8, 1948
	69.1	November 4, 1947	March 8, 1948
	70.1	April 11, 1933	April 21, 1933
71		November 7, 1939	February 8, 1940
72		November 6, 1934	January 22, 1935
do		November 5, 1946	January 7, 1947
do		November 4, 1947	March 8, 1948
73		November 6, 1962	January 15, 1963
74		November 6, 1956	January 11, 1957
77		November 4, 1947	March 8, 1948
78		May 2, 1935	May 13, 1935
79		November 8, 1932	January 5, 1933
80		November 8, 1932	January 5, 1933
81		November 8, 1932	January 5, 1933
do		March 9, 1937	April 6, 1937
82		November 2, 1948	January 7, 1949
	85.1	November 6, 1962	January 15, 1963
87		November 6, 1934	January 22, 1935
do		November 3, 1959	February 3, 1960
	88.1	November 6, 1945	January 15, 1946
	88.2	June 5, 1962	June 29, 1962
	92.1	November 3, 1959	February 3, 1960
92		November 7, 1950	January 22, 1951
93		November 6, 1945	January 15, 1946
do		November 4, 1958	January 14, 1959
	93.1	November 4, 1958	January 14, 1959
95		November 5, 1946	January 7, 1947
98		May 2, 1935	May 13, 1935
	107.1	November 4, 1958	January 14, 1959
108		November 6, 1934	January 22, 1935

<i>Section Amended</i>	<i>Section Added</i>	<i>Date of Election</i>	<i>Date Ratified</i>
115		November 4, 1947	March 8, 1948
116		November 4, 1947	March 8, 1948
	116.1	November 4, 1947	March 8, 1948
117		November 4, 1947	March 8, 1948
do		June 3, 1952	August 7, 1952
do		November 5, 1957	February 5, 1958
	117.1	November 4, 1947	March 8, 1948
117.1		June 3, 1952	August 7, 1952
	117.2	November 4, 1947	March 8, 1948
	117.3	November 4, 1947	March 8, 1948
118		November 4, 1947	March 8, 1948
	119.1	November 4, 1947	June 9, 1944
	119.2	May 16, 1944	March 8, 1948
	119.3	November 4, 1947	March 8, 1948
119.3		June 8, 1954	January 11, 1955
	119.4	November 8, 1949	December 15, 1949
122		November 6, 1962	January 15, 1963
125		November 7, 1939	February 8, 1940
do		May 7, 1940	January 20, 1941
do		November 6, 1956	January 11, 1957
	125.1	November 5, 1940	January 21, 1941
127		March 9, 1937	April 6, 1937
128		March 9, 1937	April 6, 1937
	128.1	March 9, 1937	April 6, 1937
	132.1	November 3, 1942	January 11, 1943
134		November 5, 1946	January 7, 1947
do		November 6, 1951	March 10, 1952
135		November 3, 1942	January 11, 1943
	135.1	June 1, 1948	January 7, 1949
135.1		November 6, 1962	January 15, 1963
136		November 3, 1942	January 11, 1943
do		November 6, 1951	March 10, 1952
137	(repealed)	November 6, 1951	March 10, 1952
138	(repealed)	November 6, 1951	March 10, 1952
139	(repealed)	November 6, 1951	March 10, 1952
140		November 6, 1945	January 15, 1946
142		November 8, 1932	January 5, 1933
do		March 9, 1937	April 6, 1937
do		November 5, 1957	February 5, 1958
do		November 6, 1962	January 15, 1963

<i>Section Amended</i>	<i>Section Added</i>	<i>Date of Election</i>	<i>Date Ratified</i>
	142.1	March 9, 1937	April 6, 1937
144		November 6, 1956	January 11, 1957
145		November 7, 1939	February 8, 1940
do		November 4, 1947	March 8, 1948
	145.01	November 4, 1952	January 9, 1953
	145.1	November 3, 1942	January 11, 1943
145.1		November 7, 1950	January 22, 1951
	145.2	November 2, 1954	January 11, 1955
146		March 9, 1937	April 6, 1937
do		November 5, 1940	January 21, 1941
do		November 3, 1953	March 5, 1954
	146.1	November 5, 1946	January 7, 1947
146.1		November 4, 1947	March 8, 1948
146.1		June 8, 1954	January 11, 1955
	146.2	November 5, 1946	January 7, 1947
146.2	(repealed)	June 8, 1954	January 11, 1955
	147.1	November 2, 1937	March 12, 1938
147.1		June 7, 1960	January 12, 1961
148		March 9, 1937	April 6, 1937
do		November 6, 1945	January 15, 1946
149		November 8, 1932	January 5, 1933
do		November 4, 1952	January 9, 1953
150		November 4, 1952	January 9, 1953
151		November 3, 1942	January 11, 1943
do		November 8, 1949	December 15, 1949
	151.1	November 6, 1945	January 15, 1946
151.1		November 5, 1946	January 7, 1947
	151.2	November 3, 1959	February 3, 1960
	151.3	November 6, 1945	January 15, 1946
151.3		November 5, 1946	January 7, 1947
do		June 8, 1954	January 11, 1955
do		November 6, 1956	January 11, 1957
do		November 4, 1958	January 14, 1959
	151.4	November 8, 1949	December 15, 1949
151.4		November 3, 1959	February 3, 1960
	151.4.1	November 3, 1959	February 3, 1960
	151.4.2	November 3, 1959	February 3, 1960
	151.4.3	November 3, 1959	February 3, 1960
	151.4.4	November 3, 1959	February 3, 1960
	151.4.5	November 3, 1959	February 3, 1960

<i>Section Amended</i>	<i>Section Added</i>	<i>Date of Election</i>	<i>Date Ratified</i>
	151.4.6	November 3, 1959	February 3, 1960
	151.5	June 6, 1950	September 26, 1950
	151.6	November 7, 1961	February 13, 1962
153		November 5, 1940	January 21, 1941
do		November 3, 1942	January 11, 1943
do		May 16, 1944	June 9, 1944
do		November 5, 1946	January 7, 1947
do		November 7, 1950	January 22, 1951
	153.1	November 7, 1944	January 16, 1945
154		November 4, 1947	March 8, 1948
155		November 6, 1962	January 15, 1963
156		May 16, 1944	June 9, 1944
do		November 6, 1945	January 15, 1946
do		November 4, 1952	January 9, 1953
	156.1	November 6, 1962	January 15, 1963
	158.1	November 5, 1946	January 7, 1947
	158.2	November 4, 1952	January 9, 1953
	158.3	November 4, 1952	January 9, 1953
	158.4	November 6, 1962	January 15, 1963
161		November 6, 1934	January 22, 1935
do		November 5, 1940	January 21, 1941
do		November 3, 1942	January 11, 1943
do		November 2, 1943	February 2, 1944
do		November 6, 1951	March 10, 1952
	161.1	November 6, 1951	March 10, 1952
	161.2	November 6, 1951	March 10, 1952
163		November 7, 1944	January 16, 1945
do		November 5, 1957	February 5, 1958
do		November 4, 1958	January 14, 1959
	165.1	November 5, 1940	January 21, 1941
	165.1.1	November 8, 1949	December 15, 1949
	165.1.3	November 4, 1952	January 9, 1953
	165.1.4	November 8, 1955	March 7, 1956
	165.2	November 5, 1946	January 7, 1947
165.2		November 4, 1947	March 8, 1948
	165.2.1	November 6, 1956	January 11, 1957
	165.3	June 5, 1956	January 11, 1957
	165.4	November 5, 1957	February 5, 1958
	165.6	November 4, 1958	January 14, 1959
166		May 2, 1935	May 13, 1935

<i>Section Amended</i>	<i>Section Added</i>	<i>Date of Election</i>	<i>Date Ratified</i>
	166.1	November 4, 1947	March 8, 1948
	168.1	November 7, 1944	January 16, 1945
168.1		November 2, 1948	January 7, 1949
	168.1.1	November 2, 1948	January 7, 1949
	168.1.2	November 2, 1948	January 7, 1949
168.1.2		November 6, 1951	March 10, 1952
	168.1.3	November 2, 1948	January 7, 1949
	168.1.4	November 2, 1948	January 7, 1949
	168.1.5	November 2, 1948	January 7, 1949
168.1.5		November 6, 1951	March 10, 1952
	168.1.5.1	November 6, 1951	March 10, 1952
	168.1.5.2	November 8, 1955	March 7, 1956
	168.1.6	November 2, 1948	January 7, 1949
	168.1.7	November 2, 1948	January 7, 1949
168.1.7		November 6, 1951	March 10, 1952
	168.1.8	November 2, 1948	January 7, 1949
	168.1.9	November 2, 1948	January 7, 1949
	168.1.10	November 2, 1948	January 7, 1949
	168.1.11	November 2, 1948	January 7, 1949
	168.1.12	November 2, 1948	January 7, 1949
168.1.12		November 8, 1949	December 15, 1949
	168.1.13	November 2, 1948	January 7, 1949
	168.1.14	November 2, 1948	January 7, 1949
	168.1.16	November 6, 1951	March 10, 1952
	168.1.17	November 6, 1951	March 10, 1952
	168.3	November 5, 1946	January 7, 1947
	171.1	November 2, 1948	January 7, 1949
171.1		November 8, 1949	December 15, 1949
	171.1.1	November 2, 1948	January 7, 1949
	171.1.2	November 2, 1948	January 7, 1949
171.1.2		November 8, 1949	December 15, 1949
	171.1.3	November 2, 1948	January 7, 1949
	171.1.4	November 2, 1948	January 7, 1949
	171.1.5	November 2, 1948	January 7, 1949
171.1.5		November 8, 1949	December 15, 1949
do		November 6, 1956	January 11, 1957
	171.1.5.1	November 6, 1956	January 11, 1957
	171.1.6	November 2, 1948	January 7, 1949
	171.1.7	November 2, 1948	January 7, 1949
171.1.7		November 8, 1949	December 15, 1949

<i>Section Amended</i>	<i>Section Added</i>	<i>Date of Election</i>	<i>Date Ratified</i>
171.1.7		November 6, 1956	January 11, 1957
	171.1.8	November 2, 1948	January 7, 1949
	171.1.9	November 2, 1948	January 7, 1949
	171.1.10	November 2, 1948	January 7, 1949
	171.1.11	November 2, 1948	January 7, 1949
	171.1.12	November 2, 1948	January 7, 1949
	171.1.13	November 2, 1948	January 7, 1949
	171.1.14	November 2, 1948	January 7, 1949
172		March 9, 1937	April 6, 1937
do		November 6, 1951	March 10, 1952
do		November 4, 1952	January 9, 1953
	172.1	March 9, 1937	April 6, 1937
172.1		November 5, 1940	January 21, 1941
do		November 3, 1942	January 11, 1943
do		June 5, 1956	January 11, 1957
do		November 5, 1957	February 5, 1958
	172.1.1	November 5, 1957	February 5, 1958
	172.1.2	November 5, 1957	February 5, 1958
	172.1.3	November 5, 1957	February 5, 1958
	172.1.4	November 5, 1957	February 5, 1958
	172.1.5	November 5, 1957	February 5, 1958
	172.1.6	November 5, 1957	February 5, 1958
	172.1.7	November 5, 1957	February 5, 1958
172.1.7		June 7, 1960	January 12, 1961
	172.1.8	November 5, 1957	February 5, 1958
	172.1.9	November 5, 1957	February 5, 1958
	172.1.10	November 5, 1957	February 5, 1958
	172.1.11	November 5, 1957	February 5, 1958
172.1.11		November 7, 1961	February 13, 1962
	172.1.12	November 5, 1957	February 5, 1958
	172.1.13	November 5, 1957	February 5, 1958
	172.1.14	November 5, 1957	February 5, 1958
	172.1.15	November 5, 1957	February 5, 1958
175		November 3, 1942	January 11, 1943
do		June 5, 1956	January 11, 1957
179		May 2, 1935	May 13, 1935
183		June 1, 1948	January 7, 1949
220		November 7, 1950	January 22, 1951
222		June 5, 1956	January 11, 1957
	222.1	November 3, 1959	February 3, 1960

THE CITY AND COUNTY AND ITS POWERS

Name and Boundaries of City and County

SECTION 1. The City and County of San Francisco shall continue as a municipal corporation known by name as San Francisco. The boundaries of the municipal corporation are those set forth in the Political Code of California and as such may be extended as provided by law.

Powers of the City and County

SECTION 2. The City and County of San Francisco shall have perpetual succession; may appear, sue and defend in all courts and places in all matters and proceedings; may have and use a common seal and alter the same at pleasure; may, subject to the restrictions contained in this charter, purchase, receive, hold and enjoy, sell, lease and convey real and personal property; receive bequests, gifts and donations of all kinds of property in fee simple, or in trust for charitable and other purposes; and do all acts necessary to carry out the purposes of such gifts, bequests and donations, with power to manage, sell, lease or otherwise dispose of the same in accordance with the terms of the gift, bequest or trust.

All rights and titles to property, all rights and obligations under contracts or trusts, and all causes of action of any kind in any court or tribunal vested in the City and County of San Francisco or in any officer or employee thereof in his official capacity, at the time this charter becomes effective, as well as all liabilities in contract or tort and causes of action involving the same in so far as they affect the city and county or any officer or employee thereof in his official capacity which shall be outstanding, at the time this charter becomes effective, shall continue without abatement or modification by reason of any provision hereof.

All ordinances or resolutions in force at the time this charter takes effect and not inconsistent therewith shall continue in force until amended or repealed. All public improvements or other proceedings legally authorized under the charter superseded by this charter shall be carried to completion under previously existing laws or under this charter. The powers or duties vested in city and county officers, boards or commissions by law or under the charter superseded by this charter shall be exercised, continued and carried out by their successors or by other city and county

officers, boards or commissions, consistent with the provisions of this charter.

All functions of the city and county, and the powers and duties of officers and employees charged with the performance thereof, as these shall have been apportioned among departments and offices, and institutions, utilities, bureaus or other subdivisions thereof, as existing at the time this charter shall go into effect, shall continue to be the functions of such departments and offices and the powers and duties of officers and employees assigned thereto, except as in, or under authority of, this charter otherwise specifically provided. The legally authorized officers and employees of each of said departments and offices or subdivisions thereof shall continue as the officers and employees of said departments and offices or subdivisions thereof, subject to the conditions governing their respective appointments to such positions, and except as in this charter otherwise provided; and where part of the functions and duties of any department or office are, by this charter, transferred or placed in any other department or office, the persons performing such functions and duties, shall be transferred therewith. The compensations legally authorized for the several officers and employees shall be continued subject to the other provisions of this charter.

The city and county may make and enforce all laws, ordinances and regulations necessary, convenient or incidental to the exercise of all rights and powers in respect to its affairs, officers and employees, and shall have all rights and powers appropriate to a county, a city, and a city and county, subject only to the restrictions and limitations provided in this charter, including the power to acquire and construct plants, works, utilities, areas, highways and institutions outside the boundaries of the city and county, and maintenance and operation of the same, and the exercise of functions or maintenance of services outside the boundaries of the city and county, including the expenditure of funds therefor through any agency. The specification or enumeration in this charter of particular powers shall not be exclusive. The exercise of all rights and powers of the city and county when not prescribed in this charter shall be as provided by ordinance or resolution of the board of supervisors.

Ordinances under the former charter conflicting with sections of the new charter, which sections were not self-executing but required effectua-

tion by legislative action, were not automatically repealed as this section would imply in its provision that "all ordinances or resolutions in force at the time this charter takes effect and not inconsistent therewith shall continue in force until amended or repealed. **King v. Leavy** (1932) 124 Cal. App. 422, 12 Pac. (2d) 661.

In the provisions of this section and §§ 3 and 101, the charter does not purport to place any limitation upon the issuance of bonds as a means of meeting an obligation imposed by statute. **San Francisco v. Collins** (1932) 216 Cal. 187, 13 Pac. (2d) 912.

Cited in **Madison v. San Francisco** (1951) 106 Cal. App. (2d) 232, 234 Pac. (2d) 995; **San Francisco v. Boss** (1948) 83 Cal. App. (2d) 445, 189 Pac. (2d) 32; **San Francisco v. Ross** (1955) 44 Adv. Cal. 51, 279 Pac. (2d) 529.

General Law Procedure

SECTION 3. Where a procedure for the exercising of any rights or powers belonging to a city, or a county, or a city and county is provided by statute of the State of California, said procedure shall control and be followed unless a different procedure is provided in, or by ordinance enacted under authority of, this charter.

In the provisions of this section and §§ 2 and 101, the charter does not purport to place any limitation upon the issuance of bonds as a means of meeting an obligation imposed by statute. **San Francisco v. Collins** (1932) 216 Cal. 187, 13 Pac. (2d) 912.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904.

ELECTIVE AND APPOINTIVE OFFICERS

City and County Officers

SECTION 4. The officers of the city and county shall be the officers elected by vote of the people, members of the board of education, members of boards and commissions appointed by the mayor, members of the juvenile probation and adult probation boards or committees, members of the board of law library trustees, the superintendent of schools, the clerk of the municipal court, the secretary and jury commissioner of the superior court, the executive appointed by each board or commission as the chief executive officer under such board or commission, the controller, the chief administrative officer, the head of each department under the chief administrative officer and the coroner, public administrator, county clerk, tax and license collector, recorder, registrar of voters, horticultural commissioner, sealer of weights and measures, and such other officers as may hereafter be provided by law or so designated by ordinance.

The chief of police is a chief executive officer within the meaning of this section. **Christal v. Police Commission** (1939) 33 Cal. App. (2d) 564, 92 Pac. (2d) 416.

Elective Officers and Terms

SECTION 5. The mayor, the members of the board of supervisors, an assessor, a district attorney, a city attorney, a sheriff, a treasurer, a public defender, and municipal court judges shall be elected by the voters of the city and county. At the general municipal election in 1943, and at the general municipal election in every fourth year thereafter, there shall be elected a mayor, six supervisors, a district attorney and a sheriff, and at the general municipal election in 1945, and at the general municipal election in every fourth year thereafter, there shall be elected five supervisors, a city attorney, and a treasurer, and at the general election in 1942, and at the general election in every fourth year thereafter there shall be elected an assessor and a public defender. All of the afore-said officials shall be elected for a term of four years from the commencement of their respective terms as herein specified. The term of the assessor who shall hold office on the 8th day of January, 1943, shall expire at twelve o'clock noon on said date, and the person elected assessor at the general election in 1942 shall suc-

ceed to said office at twelve o'clock noon on said 8th day of January, 1943.

At the general municipal election in 1943, there shall be elected four municipal court judges to succeed those judges whose respective terms of office expire on the 8th day of January, 1944, and at the general municipal election in each sixth year after 1943 the successors to said four municipal court judges shall be elected, and at the general municipal election in 1945 there shall be elected four municipal court judges to succeed those judges whose respective terms of office expire on January 8, 1946, and at the general municipal election in each sixth year after 1945, the successors to said last mentioned judges shall be elected, and at the general municipal election in 1947, there shall be elected four municipal court judges to succeed those judges whose respective terms of office expire on the 8th day of January, 1948, and at the general municipal election in each sixth year after 1947, the successors to said last mentioned judges shall be elected. The term of each municipal court judge shall be six years from and after twelve o'clock noon on the 8th day of January following his election. All terms of office of elective officials shall begin at twelve o'clock noon on the 8th day of January following the date of their election.

Any appointive officer or employee of the city and county who shall become a candidate for election by the people to any public office shall automatically forfeit such city and county office or position.

No person elected as mayor or supervisor shall be eligible, for a period of one year after his last day of said service as mayor or supervisor, for appointment to any full time position carrying compensation in the city and county service.

Should this amendment not be approved by the Legislature of the State of California so that the office of assessor may be voted for at the general election to be held in November, 1942, as in this section provided, then in that event the term of the incumbent in the office of assessor at twelve o'clock noon on the 8th day of January, 1943, shall not expire at twelve o'clock noon on said date, but shall continue until the 8th day of January, 1944, and the office of assessor shall be filled at the general municipal election in 1943, for a three year term from said date, and said office of assessor shall again be filled at the general election in 1946

for a four year term from said date, and at the general election in each fourth year thereafter. [*Amended, 1941*]

Cited in **Hanley v. Murphy** (1953) 40 Cal. (2d) 572, 255 Pac. (2d) 1.

SECTION 5.1. No person elected as mayor shall be eligible to serve, or serve, as such for more than two successive terms; but such service shall not disqualify any person for further service as mayor for any term or terms which are not successive, nor for any parts of terms which are not successive. [*New section, 1953*]

Absence from State, and Vacancies

SECTION 6. No officer of the city and county, except members of the police department acting under orders of the chief thereof, shall absent himself from the state, except by permission of the mayor and the board of supervisors. Violation of this section shall be sufficient cause for removal of any officer violating the same.

An office becomes vacant when the incumbent thereof dies, resigns, is adjudged insane, convicted of a crime involving moral turpitude, or of an offense involving a violation of his official duties, or is removed from office, or ceases to be a resident of the city and county, or neglects to qualify within the time prescribed by law, or within twenty days after his election or appointment, or shall have been absent from the state without leave for more than sixty consecutive days.

Qualifications of Officers and Employees

SECTION 7. No person shall be a candidate for any elective office, nor shall be appointed as a member of any board or commission unless he shall have been a resident of the city and county for a period of at least five years and an elector thereof for at least one year immediately prior to the time of his taking office, unless otherwise specifically provided in this charter, and every elected officer and member of any board or commission

§ 7-8

shall continue to be a resident of the city and county during incumbency of office, and upon ceasing to be such resident, shall be removed from office.

Except for those offices and positions and officers and employees specifically provided for in this section and other sections of the charter, the residential qualifications and requirements for all officers and employees and all offices and positions in the city and county service shall be as provided by ordinance of the board of supervisors.

All officers and employees of the city and county shall be citizens of the United States. [*Amended, 1933; 1951; 1952; 1958*]

For judicial decisions involving provisions of this section that were repealed by the amendment of 1958, see **Lansing v. Board of Education** (1935) 7 Cal. App. (2d) 211, 45 Pac (2d) 1021; **Dierssen v. Civil Service Commission** (1941) 43 Cal. App. (2d) 53, 110 Pac. **Denton v. San Francisco** 119 Cal. App. (2d) 369, 260 Pac. (2d) 83; **Ballf v. Public Welfare Department** (1957) 151 Cal. App. (2d) 784, 312 Pac. (2d) 360.

Cited in **Terry v. Civil Service Commission of San Francisco** (1952) 108 Cal. App. (2d) 861, 240 Pac. (2d) 691.

Bonds of Officers and Employees

SECTION 8. Unless otherwise provided in this charter, such officers and employees as may be specified by ordinance, shall give bond in such amounts as may be required by the ordinance, provided that the minimum amount of the bond to be furnished by the controller be \$100,000; by the tax collector \$100,000; by the county clerk \$50,000, and by the public administrator \$50,000. The board of supervisors shall provide by ordinance the terms, form and conditions of all such bonds and for the filing thereof. The sureties on such bonds shall be such as specified by and approved in the manner provided by ordinance. The board of supervisors may, by ordinance, provide for group bonding of

officers and employees. The premiums on all official bonds shall be paid by the city and county. [*Amended, 1946*]

Powers Vested in Board of Supervisors

SECTION 9. The powers of the city and county, except the powers reserved to the people or delegated to other officials, boards or commissions by this charter, shall be vested in the board of supervisors and shall be exercised as provided in this charter. The board of supervisors shall, ex officio, be the board of equalization for the city and county. The supervisors shall determine the maximum number of each class of employment in each of the various departments and offices of the city and county and shall fix rates and schedules of compensation therefor in the manner provided in this charter. On the recommendation of the mayor and the chief administrative officer, the board of supervisors may create or abolish departments which are now or may hereafter be placed under the chief administrative officer or under commissions appointed by the mayor.

The board of supervisors may, by ordinance, confer on any officer, board or commission such other and additional powers as the board may deem advisable.

The board of supervisors, by ordinance, may provide medical care, hospitalization, compensation and such other benefits as the board may deem necessary for regularly authorized volunteer civilian defense workers suffering injury arising out of and in the course of their activities as such civilian defense workers. [*Amended 1943; 1956*]

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **San Francisco v. Boyd** (1941) 17 Cal. (2d) 606, 110 Pac. (2d) 1036; **King v. Leavy** (1932) 124 Cal. App. 422, 12 Pac. (2d) 661, (determination of number of each class of employment; creation or abolishment of departments).

Number, Compensation and Meetings of Supervisors

SECTION 10. The board of supervisors shall consist of eleven members elected at large, provided that for the period January 8, 1932, to January 8, 1934, the board shall consist of fifteen members. Each member of the board shall be paid a salary of forty-eight hundred dollars (\$4,800) per year and each shall

execute an official bond to the city and county in the sum of five thousand dollars (\$5,000).

At twelve o'clock noon on the 8th day of January next following their election, the newly elected and continuing members of the board of supervisors shall meet at the legislative chamber in the City Hall, and thereafter regular meetings shall be held as fixed by resolution. The supervisors constituting the new board shall, on January 8, 1932, and every second year thereafter, elect one of their number as president of the board for a two-year term. The president shall preside at all meetings, shall appoint all standing and special committees of the board and shall have such other powers and duties as the supervisors may provide.

The meetings of the board shall be held in the City Hall, provided that, in case of emergency, the board, by resolution, may designate some other appropriate place as its temporary meeting place. The board shall cause a calendar of the business scheduled for each meeting to be published and shall keep and publish a journal of its proceedings. Notice of any special meeting shall be published at least twenty-four hours in advance of such special meeting. [*Amended, 1957*]

Suspension and Removal

SECTION 11. Any elective officer, and any member of the civil service commission or public utilities commission or school board may be suspended by the mayor and removed by the board of supervisors for official misconduct, and the mayor shall appoint a qualified person to discharge the duties of the office during the period of suspension. On such suspension, the mayor shall immediately notify the supervisors thereof in writing and the cause therefor, and shall present written charges against such suspended officer to the board of supervisors at or prior to its next regular meeting following such suspension, and shall immediately furnish copy of same to such officer, who shall have the right to appear with counsel before the board in his defense. Hearing by the supervisors shall be held not less than five days after the filing of written charges. If the charges are deemed to be sustained by not less than a three-fourths vote of all members of the board, the suspended officer shall be removed from office; if not so sustained, or if not acted on by the board of supervisors within thirty days

LEGISLATIVE PROCEDURE

Clerk of the Board of Supervisors

SECTION 12. Subject to the civil service provisions of this charter the board of supervisors shall appoint a clerk, who shall be designated as clerk of the board of supervisors, provided, however, that any person who has performed the duties of clerk of the board of supervisors continuously for one year prior to the date of approval of this amendment by the electorate and who on said date shall be performing said duties, is hereby confirmed in said position and thereafter shall hold the same pursuant to said civil service provisions of this charter. The clerk shall, ex-officio, be clerk of the board of equalization. The clerk shall have charge of the office and records of the board and its committees, and the personnel employed to handle the business, affairs and operation of the board, its committees and members when engaged in official duty. The clerk shall be the appointing officer for such personnel, subject to the civil service provisions of this charter. The clerk shall keep a journal of proceedings of the board and files of all ordinances and resolutions and properly index the same. He shall be responsible for the publication, as required by law, of ordinances, resolutions and other matters acted on by the board for which publication is specified. He shall have such other duties and responsibilities as the board shall prescribe. [*Amended, 1948*]

Action by Resolution or Ordinance

SECTION 13. Action by the board of supervisors shall be by ordinance or resolution in writing introduced by a member or by a committee of said board and passed or adopted by a majority of all the members of the board at each reading. Every legislative act shall be by ordinance. The enacting clause of all ordinances shall be, "Be it ordained by the people of the City and County of San Francisco." Every ordinance and resolution, except ordinances making appropriations, shall be confined to one subject which shall be clearly expressed in the title, and ordinances making annual or supplemental appropriations shall be confined to the subject of appropriations.

If any subject is embraced in an ordinance and is not expressed in the title thereof, the ordinance shall be void only as to so much

thereof as is not expressed in the title. Any ordinance may be amended by an ordinance amending or repealing the particular sections thereof or adding sections thereto.

An ordinance shall be passed by the board of supervisors only after reference to and report thereon from committee, unless it be an ordinance prepared and reported out by committee, and after two readings and votes at separate meetings of the board, which meetings shall be at least five days apart; provided, however, that as to an emergency measure as defined in section 16, reference to committee or the readings and votes at separate meetings may be waived by a three-fourths vote of all members of the board. The existing or impending emergency as defined in such ordinance shall be declared by specific section in such emergency ordinance. The annual appropriation ordinance shall be passed only after two readings, not less than five days apart, and the second or final passage shall be not less than fifteen days after the introduction of each ordinance.

No ordinance granting a franchise shall be finally passed within ninety days of its introduction.

No resolution shall be adopted by the board of supervisors on the date of its introduction and without reference to committee, except by the unanimous consent of the supervisors present.

Except as otherwise provided in this charter, or by ordinance, notice of the title or the purport and subject matter of each proposed ordinance which is introduced and referred to committee shall be published within three days after its presentation to the board and a copy of such proposed ordinance shall be kept available for inspection in the office of the clerk of the board. All ordinances shall be published upon passage for second reading. Emergency ordinances shall be published immediately on passage. The term "published" as used in this charter shall mean publication in the official newspaper as required by charter. The official newspaper is hereby defined to be a daily newspaper of general circulation, published in the city and county and which has a bona fide daily circulation of at least 8,000 copies.

The vote on all ordinances and resolutions upon each reading shall be by ayes and noes. The vote by ayes and noes on all measures shall be recorded in the journal of the proceedings of the board. [*Amended, 1935; 1953*]

This section and § 16 deal only with an acceleration of the legislative procedure of the board of supervisors and do not affect the exercise by the mayor of emergency powers under § 25 so as to require a previous declaration of emergency by the supervisors and an enabling ordinance. **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

The requirement of this section that every legislative act shall be by ordinance was not violated when the board of supervisors, by resolution, authorized the city to enter into a contract with the housing authority whereby the city should agree not to levy or impose taxes or special assessments against a project or the authority and that it would furnish to the project without cost certain municipal services. **Kleiber v. San Francisco** (1941) 18 Cal. (2d) 718, 117 Pac. (2d) 657.

Cited in **Brown v. Boyd** (1939) 33 Cal. App. (2d) 416, 91 Pac. (2d) 926; **King v. Leavy** (1932) 124 Cal. App. 422, 12 Pac. (2d) 661, (action by ordinance or resolution).

Waiver of Statutes of Limitation

SECTION 13.1. Any ordinance or resolution waiving, or authorizing the waiving, by the city and county of the benefit of any statute of limitation of a state, or of the United States, available to the city and county in any action or proceedings against it shall require for its passage a three-fourths vote of all members of the board of supervisors on each reading. [*New section, 1949*]

Approval by Mayor—Reconsideration and Veto

SECTION 14. Each proposed resolution or ordinance voted on by the supervisors and failing of passage and each ordinance or resolution adopted by the supervisors shall, within twenty-four hours of such action, be transmitted to the mayor by the clerk of the board, with appropriate notation of the action of the board thereon. Any resolution acted upon by the board of supervisors by unanimous consent of those present on the date of the introduction of such resolution and any ordinance adopted by the board as an emergency measure shall be acted upon by the mayor within three days after receipt thereof by him from the clerk of the board. All other ordinances or resolutions shall be acted upon by the mayor within ten days of such receipt.

The mayor shall either approve each resolution or ordinance adopted by the supervisors by signing and returning same to the clerk of the board within the time limit, or he shall disapprove and veto any resolution or ordinance, or veto or reduce any separate appropriation item therein and shall return each such resolution or ordinance to the clerk of the board with his written objections within the time limit. His failure to make such return shall constitute approval and such ordinance or resolution shall

take effect without the mayor's signed approval. The clerk of the board shall note such fact on the official copy of such resolution or ordinance. If any separate appropriation item in any resolution or ordinance is vetoed or reduced by the mayor as herein provided the remainder of any such ordinance or resolution may be approved by the mayor and, if not specifically approved by the mayor, shall take effect without such approval and shall be so noted by the clerk of the board.

The board of supervisors may reconsider any resolution or ordinance vetoed or disapproved, or any separate appropriation item vetoed or reduced by the mayor, and if, after such reconsideration, two-thirds of all the members of the board shall vote in favor of passage thereof, it shall become effective notwithstanding the mayor's veto. If a larger vote is required for the adoption of a measure by the provisions of this charter, such larger vote shall be required to overcome the veto of the mayor. The vote of reconsideration of each such vetoed resolution, ordinance or separate appropriation item therein shall be taken at the convenience of the board. If the ordinance, resolution or separate appropriation item is not passed over the mayor's veto within thirty days, the measure or item shall be lost.

In the event of any absence of the mayor for which he or the board of supervisors has failed to designate an acting mayor, no resolution or ordinance adopted by the board of supervisors shall take effect by reason of the failure of the mayor to approve, or disapprove, and return such resolution or ordinance within the time limits applicable thereto, and, in such case, the time periods or limitations as fixed by this section shall not start until an acting mayor is appointed by the mayor or elected by the supervisors, as in this charter provided, or the return of the mayor.

Any proposed resolution or ordinance voted on by the board of supervisors and failing of passage shall be reconsidered by the board on the written request of the mayor, stating his reasons therefor, filed with the clerk of the board by the mayor within ten days of the board's action on such resolution or ordinance. The board shall reconsider such measure at its convenience, but not later than thirty days after the filing of the mayor's request therefor.

Record, Publication and Effect of Ordinances and Resolutions

SECTION 15. All ordinances, after final passage or upon their becoming effective shall be certified by the clerk of the board and recorded in a book kept for that purpose, and resolutions adopted shall be certified and recorded in like manner. Except in case of an emergency measure passed and not previously published, and except as otherwise specified in this charter, publication of ordinances and resolutions in full shall not be required after final passage. Notice that an ordinance or resolution has passed or become final shall be published once within five days of such final passage. To amend an ordinance which has proceeded to second reading shall require publication of the ordinance as amended and proceeding de novo.

Emergency Measures and Effective Date of Ordinances

SECTION 16. No ordinance which is subject to the referendum provisions of this charter shall become effective until thirty days after its passage. Ordinances granting any public utility franchise or privilege shall not become effective until sixty days after their passage. Ordinances enacted by a three-fourths vote of all members of the board as an emergency measure as defined in this section and all other ordinances not subject to the referendum provisions of this charter shall become effective upon passage. No ordinance affecting franchises, grants, bond issues or the sale, lease or purchase of land shall ever be passed as an emergency measure, and the people by initiative or referendum ordinance may further restrict the matters that may be passed as emergency measures. Immediate necessary preservation of public peace, property, health or safety, provision for the uninterrupted operation of any city and county department or office or action required to comply with time limitations as established by law, shall be emergencies within the meaning hereof; provided, however, that such emergency shall actually exist and shall be specifically stated and defined in such ordinance, and shall be specifically voted on as provided in section 13 of this charter. [*Amended, 1935; 1956*]

This section and § 13 deal only with an acceleration of the legislative procedure of the board of supervisors and do not affect the exercise by the mayor of emergency powers under § 25 so as to require a previous declaration of emergency by the supervisors and enabling ordinance.

Mullins v. Henderson (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

The constitutional provision that no measure creating or abolishing any office or changing the salary, term or duties of any officer shall be construed as an emergency measure (Const. Art. IV, § 1) defines in part what the reserve power of referendum shall be, and any ordinance in conflict therewith is invalid. **Brown v. Boyd** (1939) 33 Cal. App. (2d) 460, 91 Pac. (2d) 926.

A police captain is a public officer within Const. Art. IV § 1, declaring that no measure creating or abolishing any office or changing the salary, term or duties of any officer shall be construed to be an emergency measure. Accordingly, an ordinance passed as an emergency measure is void where it creates additional positions as captains of police, and a further ordinance purporting to appropriate funds to pay the salaries attached to such officers should fall with it. **Brown v. Boyd** (1939) 33 Cal. App. (2d) 416, 91 Pac. (2d) 926.

Cited in **Madison v. San Francisco** (1951) 106 Cal. App. (2d) 232, 234 Pac. (2d) 995.

Codification of Ordinances

SECTION 17. Ordinances previously adopted and continuing in force may be codified or recodified or rearranged by ordinance. Any such ordinance shall supersede and repeal all general ordinances in effect prior thereto and shall be construed to be confined to a single subject.

Any such ordinance shall require publication only in bound or loose leaf book form, which shall constitute publication for all purposes. Any such publication shall contain certificates of the mayor, the clerk of the board of supervisors and the city attorney of the correctness of such codification and publication.

Any such ordinance shall be amended by an ordinance amending or repealing the particular sections thereof or adding sections thereto. For the purposes of any codification and the validity thereof, the procedure, effect, adoption or enactment and publication of any prior codification, including the enacting ordinance, amendments thereto, the contents of any such code, the certification and publication thereof and all other proceedings and matters in respect thereto, shall be deemed to be valid.

With any publication of the charter, there shall be included initiative ordinances and digests of reported court decisions relating to said charter and ordinances.

The board of supervisors shall have power to enforce by appropriate legislation the provisions of this section. [*Amended, 1953*]

GENERAL POWERS AND DUTIES OF BOARDS, COMMISSIONS, DEPARTMENT HEADS AND OFFICERS

Powers and Duties of County Officers

SECTION 18. Each county officer shall have all the powers conferred and shall discharge all the duties imposed by general laws upon said officer of a county or a city and county of this state, and shall have such other powers and duties as in this charter specifically provided.

This section in enjoining officers to discharge their duties as imposed by general laws does not incorporate general laws into the charter. **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

This section does not incorporate into the charter Pol. Code, § 4001, vesting the power to fix salaries in the board of supervisors. **Mullins v. Henderson** (1948) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

Powers and Duties of Boards and Commissions

SECTION 19. The board of supervisors and each board and commission appointed by the mayor, or otherwise provided by this charter, shall have powers and duties as follows:

(a) To prescribe reasonable rules and regulations not inconsistent with this charter for the conduct of its affairs, for the distribution and performance of its business, for the conduct and government of its officers and employees, and for the administration, custody and protection of property under its control and books, records and papers appertaining to its affairs. The board of supervisors, by ordinance, may provide that rules and regulations of any board or commission, or general orders of any department head issued by authority of any board or commission that are of general public concern shall be published or posted.

(b) To appoint one of its members as president to hold office for such term as each such board or commission by its rules or regulations, not inconsistent with this charter, may prescribe.

(c) To establish such standing or special committees as it shall deem necessary.

(d) To receive, on behalf of the city and county, gifts, devises and bequests for any purpose connected with or incidental to the department or affairs placed in its charge, and to administer, exe-

cute and perform the terms and conditions of trusts or any gift, devise or bequest which may be accepted by vote of the people or by the board of supervisors for the benefit of such department or purpose, and to act as trustees, under any such trust, when so authorized to do by the board of supervisors. The title to all real and personal property now owned or hereafter acquired by gift, devise, bequest or otherwise, by and for the purposes of any board or commission shall vest in the city and county.

(e) To require such periodic or special reports of departmental operations, costs and expenditures under its control as may be necessary and, exclusive of the board of supervisors, to submit an annual report to the mayor.

(f) To hold meetings at regular fixed dates and at regular meeting places, which dates or places shall not be changed except as in the manner provided by section 10 for the meeting times and places of the board of supervisors. All such meetings shall be open to the public.

(g) To hold special meetings for the purposes and in the manner provided by the board of supervisors by ordinance, provided that no matter may be considered at any special meeting unless specifically designated in the notice calling such special meeting.

(h) To appoint a secretary, a superintendent, or other executive to be the administrative head of the affairs under its control, who, unless otherwise specifically provided, shall not be subject to the civil service provisions of this charter, and shall hold office at its pleasure.

(i) To require a bond or other security from each such executive officer and from any employee in such form as the board of supervisors may authorize and in such amount as the mayor, on the recommendation of the controller, may approve, the premiums on such bonds to be paid by the city and county.

A quorum for the transaction of official business shall consist of a majority of all the members of each board or commission, but a smaller number may adjourn from time to time and compel the attendance of absent members in the manner and subject to penalties to be provided by ordinance. A majority, two-thirds, three-fourths, or other vote specified by this charter for any board or commission shall mean a majority, two-thirds, three-fourths, or other vote of all the members of such board or commission. Each

board or commission shall keep a record of the proceedings at each meeting and a copy thereof shall be forwarded promptly to the mayor.

A rule (under former § 1, ch. 3, Art. VIII) providing for punishment of police department members for negligence as to personal debts was reasonable. **Cleu v. Board of Police Commissioners** (1906) 3 Cal. App. 174, 84 Pac. 672.

Powers and Duties of Department Heads

SECTION 20. Each elective officer in charge of an administrative office, the chief executive appointed by each board or commission, the controller, the chief administrative officer, and each department head appointed by the chief administrative officer shall have the powers and duties of a department head, except as otherwise specifically provided in this charter.

Each appointive department head shall be immediately responsible to the chief administrative officer or the board or commission, as the case may be, for the administration of his department, and shall file an annual report and make such other reports, estimates and recommendations at the time and in the manner required by law, or as required by the chief administrative officer, board or commission.

He shall act as the "appointing officer" under the civil service provisions of this charter for the appointing, disciplining and removal of such officers, assistants and employees as may be authorized. On the written recommendation of the department head concerned and the approval of the chief administrative officer, board or commission to whom such department head is responsible, the head of any utility, institution, bureau or other subdivision of such department may be designated as the "appointing officer" for such utility, institution, bureau or other subdivision. Non-civil service appointments and any temporary appointments in any department or subdivision thereof, and all removals therefrom shall be made by the department head or bureau head designated as the appointing officer only with the approval of the chief administrative officer or the board or commission in charge, as the case may be.

He shall issue or authorize all requisitions for the purchase of materials, supplies and equipment required by such department, provided that, on the written approval of the chief administrative

officer or the board or commission in charge of any department, the head of any utility, institution, bureau or other subdivision of a department may likewise be vested with such power. Each department head or the head of a utility, institution, bureau or other subdivision of each department shall be responsible for the proper checking of all materials, supplies and equipment ordered for its purposes, and for the approval or disapproval of bills for claims rendered for such materials, supplies or equipment.

The head of any department, through the chief administrative officer or the board or commission in charge thereof shall recommend to the board of supervisors such ordinances as may be required to carry out the powers vested and the duties imposed, and to establish or readjust fees or charges for permits issued to or work performed for persons, firms or corporations when these are subject to his or its jurisdiction.

Each department head may suggest the creation of positions subject to the provisions of this charter, and may reduce the forces under his jurisdiction to conform to the needs of the work for which he is responsible, any other provisions of this charter to the contrary notwithstanding.

The mayor, the chief administrative officer, or the board or commission concerned, on the recommendation of any department head, or on his or its own motion, may combine or may transfer and redistribute among departments or offices under his or its authority, respectively, any function or duty assigned to or continued by this charter in any department.

This section gives a department head broad power in the reduction of forces under his jurisdiction, and the budget-making procedure, as exemplified by §§ 69, 70, 72, is in accord therewith. **Hanley v. Murphy** (1953) 40 Cal. (2d) 572, 255 Pac. (2d) 1.

Although this section permits a department head to effect a reduction of employees in his department pursuant to his judgment as to the needs of the work, "any other provision of this charter to the contrary notwithstanding," this does not mean that the department head is subject to no limitation under civil service regulations, for under the authority of this same section he must have due regard for civil service procedure on the subject of personnel classification and protected tenure in office for employees. **Hanley v. Murphy** (1953) 40 Cal. (2d) 572, 255 Pac. (2d) 1.

In compliance with the provisions of this section empowering department heads to reduce forces in conformity with the need of the work in departments, the board of fire commissioners could return a captain in the department to the rank of lieutenant. **Carr v. Fire Commission** (1938) 30 Cal. App. (2d) 208, 85 Pac. (2d) 959.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **Greif v. Dullea** (1944) 66 Cal. App. (2d) 986, 153 Pac. (2d) 581.

Power of Hearing, Inquiry and Subpoena

SECTION 21. The mayor, the board of supervisors, the chief administrative officer, the controller, or any board or commission appointed by the mayor relative solely to the affairs under its control, may require such periodic or special reports of departmental costs, operation and expenditures, examine the books, papers, records and accounts of, and inquire into matters affecting the conduct of any department or office of the city and county, and for that purpose may hold hearings, subpoena witnesses, administer oaths and compel the production of books, papers, testimony and other evidence. It shall be the duty of the chief of police to designate a police officer to serve subpoenas. Any person refusing to obey such subpoena and the other requirements hereof, or to produce such books, shall be deemed in contempt and subject to proceedings and penalties as provided by general law in such instances.

Cited in **Dierssen v. Civil Service Commission** (1941) 43 Cal. App. (2d) 53, 110 Pac. (2d) 513.

Non-interference in Administrative Affairs

SECTION 22. Except for the purpose of inquiry, the mayor and the board of supervisors shall deal with the administrative service for which the chief administrative officer is responsible, solely through such officer, and for administrative or other functions for which elective officials or boards or commissions are responsible, solely through the elective official, the board or commission or the chief executive officer of such board or commission concerned. Except for the purpose of inquiry, each board or commission, in its conduct of administrative affairs under its control, shall deal with such matters solely through its chief executive officer.

Neither the board of supervisors, nor its committees, nor any of its members shall dictate, suggest or interfere with appointments, promotions, compensations, disciplinary actions, contracts, requisitions for purchases or other administrative recommendations or actions of the chief administrative officer, or of department heads under the chief administrative officer, or under the respective boards and commissions. The board of supervisors, and each board or commission relative to the affairs of its own department, shall deal with administrative matters only in the manner provided by this charter, and any dictation, suggestion or interference herein

prohibited on the part of any supervisor or member of a board or commission shall constitute official misconduct; provided, however, that nothing herein contained shall restrict the power of hearing and inquiry as provided in this charter.

This section, prohibiting interference in administrative affairs did not invalidate a resolution of the board of supervisors passed in the proper exercise of its charter powers, and in compliance with which an action was commenced by the city to abate a stable as a public nuisance, as an unauthorized interference with the charter powers of the director of health to issue or refuse a permit to conduct such stable. **People v. Ryan** (1936) 17 Cal. App. (2d) 1, 61 Pac. (2d) 360.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **Greif v. Dullea** (1944) 66 Cal. App. (2d) 986, 153 Pac. (2d) 581.

Administrative Code

SECTION 23. The powers and duties of the departments and offices which by this charter are established or continued as departments or offices under elective officers, boards or commissions or the chief administrative officer, as such powers and duties exist at the time this charter shall go into effect, shall be continued as powers and duties of each such department or office, except as otherwise provided in this charter.

The board of supervisors may enact and provide for the publication in printed form of an administrative code, which shall specify or detail the powers, duties, methods and procedure in the several departments and offices.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904.

Permits and Inspections

SECTION 24. The board of supervisors shall regulate, by ordinance, the issuance and revocation of licenses and permits for the use of, obstruction of or encroachment on public streets and places, exclusive of the granting of franchises governed by other provisions of this charter; and for the operation of businesses or privileges which affect the health, fire-prevention, fire-fighting, crime, policing, welfare or zoning conditions of or in the city and county, and for such other matters as the board of supervisors may deem advisable.

Such ordinance shall fix the fees or licenses to be charged, which shall not be less than the cost to the city and county of regulation and inspection; provided, that in so far as the regulation and inspection of foodstuffs or articles of food for human consumption

are concerned, the fees or licenses to be charged for such regulation and inspection shall be as determined by the board of supervisors, but the same shall not exceed the cost of said regulation and inspection. Said ordinance shall also specify which department shall make the necessary investigations and inspections and issue or deny and may revoke the permits and licenses therefor. The chief of police in the performance of police duties shall have power to examine at any time the books and the premises of pawnbrokers, peddlers, junk and second-hand dealers, auctioneers and other businesses designated by the board of supervisors, and the tax collector shall have power to examine the books of any business for which a license is issued and a fee charged on the basis of the receipt of such business, and for these purposes such officials shall have the power of inquiry, investigation and subpoena, as provided by this charter.

Permits and licenses shall be issued by the departments as designated by ordinance, only after formal application for such permit or license. No such permit or license that is dependent on or affected by the zoning, set-back or other ordinances of the city and county administered by the city planning commission shall be issued except on the prior approval of the city planning commission. If any application for a permit or license is denied by the department authorized to issue same, the applicant may appeal to the board of permit appeals.

No license tax shall be imposed on any seller or manufacturer of goods, wares or merchandise operating at a fixed place of business in the city and county, except such as require permits or licenses in accordance with or under authority of any local health, sanitary or other ordinance under the police power. [*Amended, 1937*]

A limitation upon the power of the city to impose license taxes for revenue purposes with respect to businesses not mentioned in the clause of this section which excepts certain specified businesses from such taxation may not be inferred. *West Coast Advertising Co. v. San Francisco* (1939) 14 Cal. (2d) 516, 95 Pac. (2d) 138.

The levy of license taxes for revenue is not prohibited by this section, except by the concluding paragraph relating to sellers or manufacturers of goods, wares and merchandise, operating at fixed places of business. An intention to preclude such levy is not to be drawn from the clause "and for such other matters as the board of supervisors may deem advisable." *West Coast Advertising Co. v. San Francisco* (1939) 14 Cal. (2d) 516, 95 Pac. (2d) 138; *Flynn v. San Francisco* (1941) 18 Cal. (2d) 210, 115 Pac. (2d) 3.

The city has power to impose license taxes under this section either for

§ 24-24.1

regulation or for revenue or for both, except in reference to matters of statewide concern where the state has occupied the field, in which case it can regulate only in respect of matters purely local. **San Francisco v. Boss** (1948) 83 Cal. App. (2d) 445, 189 Pac. (2d) 32.

An ordinance enacted pursuant to this section requiring contractors to obtain certificates of registration or license before engaging in business is invalid where it operates in the field occupied by the state contractor's laws, and makes no attempt to regulate in matters purely local, and where the purpose of the ordinance, including the licensing provision, is regulation and not revenue. **San Francisco v. Boss** (1948) 83 Cal. App. (2d) 445, 189 Pac. (2d) 32.

The power under this section to impose a license tax upon any seller operating at a fixed place of business which requires a permit or license in accordance with or under authority of any local health, sanitary or other ordinance under the police power, is not limited, as was the case under the former charter, to places of business which require permits from the board of police commissioners. In re **McKeon** (1935) 9 Cal. App. (2d) 223, 49 Pac. (2d) 618.

An ordinance providing that upon application the board of health shall inspect the business premises to ascertain whether they are sanitary and to issue a certificate, and an ordinance providing for the amount of the fee, are not, when read together as being in *pari materia*, invalid or violative of this section, and a retail butcher whose place had been inspected and who refused on demand to pay the inspection fee was liable to fine or an alternative jail sentence. In re **McKeon** (1935) 9 Cal. App. (2d) 223, 49 Pac. (2d) 618.

Under former § 1, subd. 15, ch. 2, Art. II, empowering the board of supervisors to impose license taxes but prohibiting a tax upon persons except such as required permits from the board of police commissioners, and under former ch. 3, or § 7, ch. 4, Art. VIII, which listed the persons required to obtain permits from the board of police commissioners, a license tax upon grocery stores to defray inspection expenses and an ordinance providing for collection of such a tax by the board of health was unauthorized. In re **Hadeler** (1923) 61 Cal. App. 630, 215 Pac. 562.

Failure to invoke and exhaust the administrative remedy of appeal under this section and § 39 to the Board of Permit Appeals constitutes a bar to judicial relief. **Lynn v. Duckel** (1956) 46 Cal. (2d) 845, 299 Pac. (2d) 236.

By ignoring the permit procedure established by this section and § 39 and building a roadway without permit, then suing the Director of Public Works for mandatory injunction for removal of city's obstruction to the roadway, a property owner attempts to nullify the procedure established by law, to the injury of the public, and does not come into court with "clean hands". **Lynn v. Duckel** (1956) 46 Cal. (2d) 845, 299 Pac. (2d) 236.

Cited in **Lindell Co. v. Board of Permit Appeals** (1943) 23 Cal. (2d) 303, 144 Pac. (2d) 4; **People v. Galena** (1937) 24 Cal. App. (2d) 770, 70 Pac. (2d) 724; **Equi v. San Francisco** (1936) 13 Cal. App. (2d) 140, 56 Pac. (2d) 590.

Uniform Sales and Use Taxes

SECTION 24.1. Notwithstanding any of the provisions of Section 24 or any other provisions of this charter, the board of supervisors shall have the power to enact an ordinance that will

be in accordance with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code of the State of California and any amendments thereto, insofar as said Part 1.5 of Division 2, as amended, provides for uniform local sales and use taxes, and it may enact such other ordinances and authorize the execution of such agreements as may be necessary or convenient to insure the imposition and collection of such taxes. [*New section, 1959*]

POWERS AND DUTIES OF ELECTIVE OFFICERS

The Mayor

SECTION 25. The mayor shall be the chief executive officer of the city and county upon whom process issued by authority of law shall be served. He shall be an elective officer and his compensation shall be fixed in accordance with the salary standardization provisions of this charter. He shall furnish an official bond in the sum of twenty-five thousand dollars (\$25,000). He shall appoint, and at his pleasure may remove, an executive secretary and one confidential secretary, and one stenographer. The board of supervisors may annually appropriate additional sums to be expended by the mayor for purposes and duties incidental to the administration of the office of mayor, which shall be subject to the provisions of this charter relative to appropriations and the payment of claims. He shall, at the first meeting of the board of supervisors in October of each year, communicate by message to the supervisors a general statement of the condition of the affairs of the city and county, and recommend the adoption of such measures as he may deem expedient and proper.

The mayor shall be responsible for the enforcement of all laws relating to the municipality and for the review and submission of the annual executive budget; he shall supervise the administration of all departments under boards and commissions appointed by him; he shall receive and examine, without delay, all complaints relating to the administration of the affairs of the city and county, and immediately inform the complainant of findings and actions thereon; and he shall coordinate and enforce cooperation between all departments of the city and county. The mayor shall have power to postpone final action on any franchise that may be passed by the supervisors until such proposed franchise shall have been voted on at the next election.

The mayor shall appoint such members of boards or commissions and other officers as provided by this charter. He shall appoint for the unexpired term of the office vacated, a qualified person to fill any vacancy occurring in any elective office.

The mayor shall have a seat but no vote in the board of supervisors and in any board or commission appointed by him, with the right to report on or discuss any matter before such board or com-

mission concerning the departments or affairs in his charge. He shall have power to designate a member of the board of supervisors to act as mayor in his absence. Should he fail, neglect or refuse so to do, the supervisors shall elect one of their number to act as mayor during his absence. When a vacancy occurs in the office of mayor, it shall be filled for the unexpired portion of the term by the supervisors. Every person who has served as mayor of the city and county, so long as he remains a resident thereof, shall have a seat in the board of supervisors and may participate in its debates, but shall not be entitled to a vote or to compensation.

In case of a public emergency involving or threatening the lives, property or welfare of the citizens, or the property of the city and county, the mayor shall have the power, and it shall be his duty, to summon, organize and direct the forces of any department in the city and county in any needed service; to summon, marshal, deputize or otherwise employ other persons, or to do whatever else he may deem necessary for the purpose of meeting the emergency. The mayor may make such studies and surveys as he may deem advisable in anticipation of any such emergency. [*Amended, 1948*]

Emergency action by the mayor under this section is always subject to judicial review. **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

An emergency proclamation prescribing a temporary deviation from the express rule of the charter, is not an amendment of the charter which must follow the amending procedure prescribed in Const. Art. XI. § 8. **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

The salary standardization section (§ 151) may be superseded by the exercise by the mayor of his powers under this section in an emergency. **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

The word "emergency," as used in this section, has reference to a method adopted as an expedient for meeting a situation which ordinarily calls for immediate action. **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

The emergency justifying the exercise by the mayor of emergency powers is not restricted to conditions following a public disaster brought about by an earthquake, a fire, flood, bombing or similar calamity. **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

The word "employ" as used in this section relating to the emergency power of the mayor means to hire, and therefore to fix the compensation of those hired. Although the power to fix compensation of municipal employees is vested in the board of supervisors, this power may be suspended during an emergency. **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

The question as to whether existing conditions shown by evidence justifies action taken by the mayor pursuant to emergency powers granted him by this section is one of fact, and the trial court's finding

on the question is conclusive on appeal if the evidence on the issue is conflicting or it is such that fair and impartial minds may draw different conclusions therefrom. **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

The passage of an ordinance or resolution in accordance with § 13, § 16 and § 179, is not requisite to the exercise by the mayor of the emergency powers vested in him by this section. Sections 13 and 16 deal only with an acceleration of legislative procedure and of the effectiveness of ordinances in cases considered as emergency legislation. And § 179 merely provides for expeditious passage of such ordinances as may be necessary to enable the mayor to carry out his emergency powers. **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

Emergency proclamations of the mayor acting under this section, fixing the compensation of employees of a newly acquired street railway were not repealed by standardization and annual salary ordinances subsequently adopted, where they did not deal with the actual emergency, but were based on normal pay and were enacted as part of the ordinary financial machinery of the city, to become effective only after the emergency had passed. **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

A finding of an emergency within this section was justified where it appeared that under an existing salary standardization ordinance employees of the newly acquired Market Street Railway would receive beginners' pay, 90% of them intended to seek other employment unless they received pay on a parity with that of the municipal railway, that this would compel a shutdown of the railway for at least a year, that in view of the war conditions, labor shortage, and the multifarious industries in the area involved in the war effort, the shutdown would dangerously cripple the war effort, and an attempt to follow normal procedure prescribed in § 151 would delay the granting of parity pay for a year. **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904.

City Attorney

SECTION 26. The city attorney shall be an elective officer and shall receive an annual salary of ten thousand dollars (\$10,000). He shall furnish an official bond in the sum of ten thousand dollars (\$10,000). He shall appoint and at his pleasure may remove, all assistants and employees in his office. He shall devote his entire time and attention to the duties of his office. He must, at the time of his election, be an elector of the city and county, qualified to practice in all the courts of this state, and he must have been so qualified for at least ten years next preceding his election. [*Salary of city attorney now subject to Section 151.1.*]

The city attorney must represent the city and county in all actions and proceedings in which it may be legally interested, or, for or against the city and county, or, any officer of the city and county in any action or proceeding, when directed so to do by the supervisors, except where a cause of action exists in favor of the

§ 26-26.1

city and county against said officer. Whenever any cause of action exists in favor of the city and county, the city attorney shall commence the same when within his knowledge or when directed so to do by the supervisors. He shall give his advice or opinion in writing to any officer, board or commission of the city and county when requested. Except as otherwise **provided in this charter**, he shall not settle or dismiss any litigation for or against the city and county, unless, upon his written recommendation, he is ordered so to do by ordinance.

The city attorney shall prepare, or approve as to form, all ordinances before they are enacted by the supervisors. He shall approve, by endorsement in writing, the form of all official or other bonds required by this charter or by ordinance before the same are submitted to the proper commission, board or office for final approval, and no such bonds shall be finally approved without such approval as to form by the city attorney. Except as otherwise in this charter provided, he shall prepare in writing the draft or form of all contracts before the same are executed on behalf of the city and county. He shall examine and approve the title of all real property to be acquired by the city and county.

He shall keep on file in his office copies of all written communications and opinions, also all papers, briefs and transcripts used in matters wherein he appears; and books of record and registers of all actions or proceedings in his charge in which the city and county or any officer or board thereof, is a party or is interested.

Attorney for Bureau of Delinquent Revenue Collection, Tax Collector's Office

SECTION 26.1. The duties of the city attorney in connection with the bureau of delinquent revenue collection shall be transferred to and be performed by the attorney for said bureau who shall be subject to the civil service provisions of this charter, and any person who has performed the duties of attorney for said bureau continuously for ten years immediately prior to the effective date of this amendment and who on said date shall be performing said duties, is hereby confirmed in said position and thereafter shall hold the same pursuant to said civil service provisions of this charter and shall be entitled to all the benefits and privileges thereof. [*New section, 1948*]

Taxpayers' Suits

SECTION 27. In the event that a taxpayer of the city and county institute suit or other proceeding as provided by law against any officer, board or commission of the city and county in the name of said taxpayer on behalf of the city and county, if judgment be finally entered in his favor he shall be allowed his costs and also such reasonable compensation for attorney's fees as may be fixed by the court.

Cited in **Powell v. San Francisco** (1944) 62 Cal. App. (2d) 291, 144 Pac. (2d) 617.

Assessor

SECTION 28. The assessor shall be an elective officer and shall receive an annual salary of eight thousand dollars (\$8,000). He shall furnish an official bond in the sum of fifty thousand dollars (\$50,000). He shall appoint, and at his pleasure may remove, one chief assistant or deputy and one confidential secretary. [*Salary of assessor now subject to Section 151.1.*]

District Attorney

SECTION 29. The district attorney shall be an elective officer and shall receive an annual salary of eight thousand dollars (\$8,000). He shall furnish an official bond in the sum of ten thousand dollars (\$10,000). He must, at the time of his election, be qualified to practice in all the courts of this state and must have been so qualified for at least five years next preceding his election. He shall appoint, and at his pleasure may remove, all assistants and employees in his office. [*Salary of district attorney now subject to Section 151.1.*]

The district attorney, either in person or by his assistants, shall prosecute all criminal cases in the municipal and superior courts, draw all complaints, and issue warrants for the arrest of persons charged with crime who are to be prosecuted in such courts.

Any amount required by the district attorney from time to time from the district attorney's special fund shall be requisitioned by the district attorney, stating the general purpose for which required, whereupon the controller shall draw his warrant therefor and the claim be paid as provided for payment of other warrants by the treasurer. All such sums may be used by the district at-

torney solely as provided by general law and he shall file vouchers with the controller at the end of each fiscal year showing what disposition he has made of any moneys received by him from such fund and the particular purpose for which it was disbursed, provided that, if a criminal proceeding be pending or under investigation, vouchers for moneys disbursed in such proceeding or investigation, need not be filed until the trial of the criminal proceeding be ended or the investigation concluded. No portion of the fund shall be used for compensation or remuneration of full time assistants or employees.

Warrant and Bond Office

SECTION 30. There shall be a warrant and bond office. The district attorney shall appoint an assistant to have charge of the warrant and bond office to be designated warrant and bond deputy, and such additional assistants and clerks as may be provided by the budget and appropriation ordinances. No person shall be appointed warrant and bond deputy who is not at the time of his appointment qualified to practice law in all the courts of this state. The warrant and bond deputy shall keep his office open continuously night and day for the transaction of business; he shall draw and approve with his signature all complaints and warrants in criminal actions to be prosecuted in the municipal courts and any inferior court established by law in this city and county and possessing criminal jurisdiction; he shall have custody of all bail bonds and appeal bonds taken in such courts.

The warrant and bond deputy may issue bail bonds and appeal bonds and order the discharge from custody of the persons for whom such bonds are approved by a magistrate. He may fix cash bail in misdemeanor cases where arrests are made without warrants and may take cash bail in all cases arising in the municipal court and any inferior court established by law in this city and county and possessing criminal jurisdiction, and may order the discharge from custody of the persons for whom cash bail is deposited with him.

In the matter of fixing bail and ordering the release of prisoners the warrant and bond deputy shall be subject to the judges of the municipal court and the judges of any court in the city and county empowered by law to act as magistrates.

The warrant and bond office, under this section, is separate and distinct from the district attorney's office. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

In appointing assistants and clerks under this section, the district attorney acts as a county officer. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

By deciding to appoint only attorneys for certain jobs as assistants or clerks under this section, the district attorney was not attempting to change the position from that of clerk in the warrant and bond office to assistant attorney in his own office. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

The provision of § 34 requiring assistant attorneys in the district attorney's office to have two-years' experience has no application to the deputy in charge of the warrant and bond office under this section nor to his assistants and clerks. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

So far as any charter requirement is concerned, "assistants and clerks" under this section do not have to be attorneys or to meet the two-years' experience requirement of § 34 for assistant attorneys in the district attorney's office. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

Attorneys appointed by the district attorney and designated on the proper civil service form as "K 52 Junior Attorney, Criminal, (Bond and Warrant Clerk)" were appointed as warrant and bond clerks under this section, rather than as assistant attorneys under § 34; hence the fact that the attorneys did not meet the two-year qualification requirement under § 34 for assistant attorneys did not render their appointment unlawful. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

Appointments as assistants or clerks under this section, being valid when made, were not adversely affected by the fact that appointees performed some duties that they were not qualified to perform, namely, some legal duties and occasional appearances in traffic court as representatives of the district attorney. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

Treasurer

SECTION 31. The treasurer shall be an elective officer and shall receive a salary of eight thousand dollars (\$8,000) per year. He shall furnish an official bond in the sum of two hundred thousand dollars (\$200,000) He shall appoint, and at his pleasure may remove, one chief assistant. [*Salary of treasurer now subject to Section 151.1.*]

Sheriff

SECTION 32. The sheriff shall be an elective officer and shall receive a salary of eight thousand dollars (\$8,000) per year. Said salary shall be exclusive of the compensation received by him from the state for the delivery of prisoners to the state prisons, and

insane persons to the state asylums for the insane. He shall furnish an official bond in the sum of fifty thousand dollars (\$50,000). He shall appoint, and at his pleasure may remove, an attorney, one under-sheriff, and one confidential secretary. [*Salary of sheriff now subject to Section 151.1.*]

Public Defender

SECTION 33. The public defender shall be an elective officer and shall receive a salary of eight thousand dollars (\$8,000) per year. He shall furnish an official bond in the sum of ten thousand dollars (\$10,000). He must, at the time of his election, be qualified to practice in all the courts of this state and must have been so qualified for at least five years next preceding his election. He shall appoint, and at his pleasure may remove, such assistants and employees in his office as may be provided by budget and appropriation ordinances. He shall immediately upon the request of a defendant who is financially unable to employ counsel, or upon order of the court, defend or give counsel or advice to any person charged with the commission of a crime. [*Salary of public defender now subject to Section 151.1.*]

Assistants and Employees in Elective Offices

SECTION 34. The elective officers of the city and county may appoint such assistants and employees as are authorized by the supervisors upon the recommendation of the mayor, in the annual budget and annual or supplemental appropriation ordinances, and may discipline and remove the same, subject to the civil service provisions of this charter except as otherwise specifically exempted by the provisions of this charter. Each assistant attorney in the offices of the city attorney, the district attorney and the public defender must, at the time of his appointment, be qualified to practice in all the courts of the state and must have been so qualified for at least two years next preceding his appointment. The salaries, wages and compensation of every kind and nature, except pensions and retirement allowances, for assistants and employees in such elective offices, shall be fixed as provided by the salary standardization provisions of this charter.

The provision of this section requiring assistant attorneys in the district attorney's office to have two-years' experience has no application to the deputy in charge of the warrant and bond office under § 30 nor

to his assistants and clerks. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac (2d) 920.

So far as any charter requirement is concerned, "assistants and clerks" under § 30 do not have to be attorneys or to meet the two-years' experience requirement of this section for assistant attorneys in the district attorney's office. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

Attorneys appointed by the district attorney and designated on the proper civil service form as "K 52 Junior Attorney, Criminal (Bond and Warrant Clerk)" were appointed as warrant and bond clerks under § 30, rather than as assistant attorneys under this section; hence the fact that the attorneys did not meet the two-year qualification requirement under this section for assistant attorneys did not render their appointment unlawful. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

Assistants and Employees in Offices of City Attorney, District Attorney and Public Defender

SECTION 34.1. Notwithstanding any other provisions of this charter, occupants of all positions in the office of city attorney and the public defender, except assistant attorneys in the offices of the city attorney and the public defender, shall be subject to the civil service provisions of this charter, provided that all such occupants who are actually employed, or who may be on military leave of absence from employment, on January 16, 1945, and who have been continuously employed for one year immediately preceding such date or such military leave, shall be continued in their respective positions as if appointed thereto after examination and certification from a civil service list of eligibles, and thereafter shall be governed and be subject to the civil service provisions of this charter. Upon their return to service, occupants who have been on military leave shall be appointed according to priority of service.

Notwithstanding any other provisions of this charter, occupants of all positions in the office of district attorney, except assistant attorneys, one confidential secretary and occupants of positions classified as senior investigator or investigator, shall be subject to the civil service provisions of this charter, provided that all such occupants of positions not so excepted who are actually employed on the effective date of this amendment, and who have been continuously employed for one year immediately preceding such date, shall be continued in their respective positions as if appointed thereto after examination and certification from

§ 34.1-34.2

a civil service list of eligibles, and thereafter shall be governed by and shall be subject to the civil service provisions of this charter. [*New section. 1945; amended, 1949*]

SECTION 34.2. Notwithstanding the provisions of section 34.1 of the charter and subject to the provisions of sections 20 and 34 of the charter governing the appointment and removal of non-civil service employees and without competitive examination, the city attorney and the public defender may each appoint a confidential secretary who shall serve at his pleasure. Before any appointment may be made to either of these positions they must be created by action of the board of supervisors upon the recommendation of the mayor in the annual budget, and annual or supplemental appropriation ordinance. [*New section, 1958*]

DEPARTMENTS UNDER MAYOR

Police Department

SECTION 35. The police department shall consist of a police commission, a chief of police, a police force and such clerks and employees as shall be necessary and appointed pursuant to the provisions of this charter, and shall be under the management of a police commission consisting of three members, who shall be appointed by the mayor, and each of whom shall receive an annual compensation of twelve hundred dollars (\$1,200). The term of each commissioner shall be four years, commencing at twelve o'clock, noon, on the 15th day of January in the years 1945, 1946 and 1948, respectively. The incumbents serving as members of the commission on the effective date of this amendment shall continue to hold their respective positions, subject to the provisions of the charter, for the remainder of the terms for which they have been respectively appointed.

The police commissioners shall be the successors in office of the police commissioners holding office in the city and county at the time this amendment shall become effective, and shall have all the powers and duties thereof, except as in this charter otherwise provided. They shall have power to regulate traffic by means of police officers and the emergency use of temporary signs or devices.

The traffic bureau is hereby established under the jurisdiction of the chief of police. The bureau shall be in charge of a traffic director, who shall have powers and duties relating to street traffic, subject to laws relating thereto and to the police commission, as follows: (a) to regulate all street traffic by means of police officers and the emergency use of temporary signs or devices; (b) to promote traffic safety education and to receive and give prompt attention to complaints in relation to street traffic and to refer all complaints relating to or arising from street design or from traffic devices, or the absence thereof, to the department of public works; (c) to collect and compile traffic accident data, copies whereof shall be furnished to the department of public works; (d) to cooperate and advise for the best performance of these functions, with the department of public works, the public utilities commission, the fire department, the department of city planning, the board of supervisors and other

departments and agencies of the city and county and state as may be necessary; and (e) to review all proposed plans relating to street traffic control devices which are received from the department of public works and to make such recommendations to that department as may be deemed necessary for the proper regulation of street traffic within fifteen (15) days after receipt of said plans from the department of public works, pursuant to Section 107.1 of this charter.

The powers and duties of the traffic director hereinabove stated shall not modify to any extent the powers and duties of any department or office, but shall be, first for the purpose of assisting the police commission in its regulation of traffic, and, second, for the purpose of recommendation only, to other departments or offices upon matters within their jurisdiction, but affecting to any extent the regulation of traffic. [*Amended, 1937; 1943; 1949; 1959*]

The fact that the board of supervisors deemed it advisable to submit amendments to this section and § 36 jointly as a single proposition on the ballot in 1943, did not convert them into a single amendment, and give rise to a patent ambiguity by virtue of the different language with reference to the effective dates of the amendments. **Callahan v. San Francisco** (1945) 68 Cal. App. (2d) 286, 156 Pac. (2d) 479.

This section, conferring upon the police commission the authority of "management" of the police department does not authorize the commission to rehear discharge proceedings or reinstate discharged officers. **Hoertkorn v. Sullivan** (1944) 67 Cal. App. (2d) 151, 153 Pac. (2d) 367.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **Greif v. Dullea** (1944) 66 Cal. App. (2d) 986, 153 Pac. (2d) 581; **Brown v. Boyd** (1939) 33 Cal. App. (2d) 416, 91 Pac. (2d) 926.

SECTION 35.1. The police commission shall appoint a chief of police who shall hold office at its pleasure. [*New section, 1943*]

SECTION 35.2. All positions in the police department legally authorized shall be continued, and incumbents therein legally appointed thereto shall be continued as officers and employees of the department under the conditions governing their respective appointments and except as otherwise provided in this charter. [*New section, 1943*]

SECTION 35.3. The chief of police may appoint members of the department holding ranks of police officer and sergeant to the rank of assistant inspector for performance of duty in the bureau of inspectors, the juvenile bureau, the accident investigation bureau, the bureau of special services, and the intelligence unit.

Assistant inspectors shall serve at the pleasure of the chief of police during their first year of service as assistant inspectors, and thereafter may only be removed and returned to their civil service rank in the manner provided herein for inspectors. An appointment as inspector or as assistant inspector shall not be subject to competitive examination. In case of vacancy in said rank of inspector in the bureau of inspectors, the appointment shall be made by the chief of police from among those holding the rank of assistant inspector who have actually served with the bureau of inspectors for at least two years prior to such appointment. The chief of police may appoint inspectors in the juvenile bureau, the accident investigation bureau, the bureau of special services, and the intelligence unit; such appointments shall be made from among those holding the rank of assistant inspector who have actually served in the bureau or unit in which the appointment is made for at least two (2) years prior to such appointment. The number of inspectors at any one time in the juvenile bureau, the accident investigation bureau, the bureau of special services, and the intelligence unit shall not be greater than a total of twenty-five (25) inspectors.

The chief of police may detail from time to time members of the department for performance of duty, without change in rank, in the bureau of inspectors, the juvenile bureau, the accident investigation bureau, the bureau of special services and the intelligence unit.

Inspectors and assistant inspectors shall have the same rights as other members of the department to take competitive examinations from their respective civil service ranks. An inspector or assistant inspector guilty of any offense or violation of the rules and regulations of the police department shall be subject to punishment as provided in section 155 of this charter; provided, however, that in addition to the punishments set forth in section 155, an inspector may be demoted to his civil service rank for any offense or violation set forth in said section and after trial and hearing before the police commission as set forth therein. The chief of police, in addition to the inspectors above provided for, shall detail any member of the department to serve as inspector of school traffic patrols who shall have rank and pay of inspector, subject to the provisions of this section. [*New section, 1943; amended, 1948; 1957; 1963*]

SECTION 35.4. Subject to the provisions of section 20 of this charter governing the appointment and removal of non-civil service appointees, and without competitive examination, the chief of police shall have power to appoint a police surgeon; to designate a deputy chief of police, a department secretary, and a director, bureau of special services, from any rank in the department; to designate a director of traffic from among the members of the police department holding rank of lieutenant or higher; to designate a chief of inspectors from among the members of the department holding the rank of captain; to designate a director, bureau of criminal information, from among the members of the department having the rank of sergeant or higher; to designate from among the members of the department holding rank of lieutenant or higher, a captain of inspectors, who shall be administrative assistant to the chief of inspectors, a captain of traffic, and a director, bureau of personnel; and to designate a supervising captain of districts from among the members of the department holding the rank of captain. The department secretary or other suitable member of the department shall be assigned by the chief of police to serve also as secretary to the police commission without extra compensation. The chief of police shall assign a property clerk from among the members of the department, such assignment shall be made at the rank and pay of the member so assigned.

When any member of the department, detailed to any of the positions above mentioned, shall be removed from said detail or position, he shall be returned to his civil service rank and position, unless removed from the department pursuant to the provisions of section 155 of the charter. [*New section, 1943; amended, 1949; 1959*]

SECTION 35.5. The police force of the city and county shall not exceed one police officer for each five hundred inhabitants thereof. The several ranks in the department shall be as follows: chief of police, deputy chief of police, director of traffic, chief of inspectors, supervising captain of districts, department secretary, captain of inspectors, captain of traffic, director of bureau of personnel, director of bureau of criminal information, captains, criminologist, lieutenants, director of bureau of special services, inspectors, sergeants, assistant inspectors, photographer, police

surgeon, police officers, police patrol drivers and women protective officers. The compensation for these ranks shall be determined as provided in section 35.5.1 and section 35.5.2 of this charter.

In determining years of service necessary for a police officer, woman protective officer and police patrol driver to receive the annual compensation as provided for herein, service rendered prior to the effective date of this amendment shall be given full credit and allowed.

The absence of any police officer, woman protective officer, or police patrol driver on military leave, as defined by section 153 of this charter, shall be reckoned a part of his service under the city and county, for the purpose of computing years of service in gaining added compensation as provided for herein. [*New section, 1943; amended, 1946; 1947; 1948; 1949; 1951; 1958; 1963*]

SECTION 35.5½. (a) The word "member" or "members" as used in this section shall mean the members of the several ranks in the police department set forth in section 35.5 of this charter.

(b) The basic week of service for each member shall be forty hours and the annual compensation set forth in section 35.5 of this charter shall be based upon said basic week of service.

(c) Each member shall be entitled to at least two days off during each week, except as hereinafter provided.

(d) Whenever in the judgment of the police commission public interest or necessity requires the services of any member to serve in excess of the basic week of service during any week, the said police commission may authorize the chief of police to permit said service, and said member shall be compensated therefor or shall receive equivalent time credited to him in lieu thereof in accordance with this sub-section. For service performed in excess of the basic week, members shall be compensated on the basis of straight time in accordance with the ratio which said excess service bears to the basic week of service and the annual compensation provided therefor in section 35.5, or in lieu thereof equivalent time off duty with pay.

(e) Nothing contained in this section shall be deemed to interfere with a vacation, as provided for in section 151 of this charter, or the normal days off per week; provided, however, that when in the judgment of the police commission public interest or necessity

requires the services of any member to serve on his vacation, or part thereof, or normal days off, the said commission may authorize the chief of police to permit said member to serve during said vacation, or part thereof, or normal days off, and he shall receive additional compensation for the period so served. Said additional compensation shall be computed on the basis of straight time in accordance with the ratio which said extra service performed bears to the basic week of service and the annual compensations provided therefor in section 35.5.

(f) Nothing in this section shall abridge or limit in any way the provisions of Section 301, Part I, of the San Francisco Municipal Code, approving rule 32 of the civil service commission, insofar as sick leave and disability leaves for members are concerned.

(g) Whenever in the judgment of the police commission the efficient performance of police duty requires that one or more members of the police department should report for roll call, orders, and assignments, prior to going on duty, the said commission may designate a period not to exceed fifteen minutes in any one day for said reporting, and the said periods of fifteen minutes need not be compensated for in money or in time off with pay.

(h) Notwithstanding the provisions of any of the foregoing sub-sections, the members of the police department shall be entitled to the days declared to be holidays for employees whose compensations are fixed on a monthly basis in the schedules of compensations adopted by the board of supervisors pursuant to the provisions of section 151 of the charter as additional days off with pay. Members required to perform police service in said department on said days shall be compensated on the basis of straight time as herein computed or shall be granted equivalent time off duty with pay in the judgment of the police commission.

(i) This section shall become effective on the first day of the month immediately following the date of ratification. [*New section, 1944; amended, 1947; 1948; 1949*]

SECTION 35.5.1. Not later than the 15th day of February of each year, the civil service commission shall survey and certify to the board of supervisors rates of compensation paid police officers or patrolmen employed in the respective police departments in all cities of 100,000 population or over in the State of California, based upon the latest federal decennial census.

Not later than the 1st day of April of each year, the board of supervisors shall have power, and it shall be its duty, by ordinance, to fix rates of compensation for the members of the police department whose annual compensations are set forth in section 35.5 of this charter and said rates shall be in lieu of said annual compensations and shall be effective on the 1st day of July next following.

The rates of compensation, fixed in said ordinance,

(a) for the fourth year of service and thereafter for police officers, police patrol drivers and women protective officers shall not exceed the highest rate of compensation paid police officers or patrolmen in regular service in the cities included in the certified report of the civil service commission;

(b) for the first, second and third year of service for police officers, police patrol drivers and women protective officers shall include the same amount of adjustment as that used in fixing the rates of compensation for the fourth year of service for the same class;

(c) for said members of the police department other than police officers, police patrol drivers and women protective officers shall include the same per cent of adjustment as that established by said ordinance for police officers in the fourth year of service; and

(d) shall be set at the dollar amount nearest the fractional amount which may result from percentage adjustment specified in this section, half dollars being taken to the next higher dollar amount.

The rates of compensation set forth in the budget estimates, the budget and the annual salary ordinance shall be those fixed by the board of supervisors as in this section provided and appropriations therefor shall be based thereon.

Not later than the 2nd Monday of July of each year, the civil service commission shall survey and certify to the board of supervisors the rates of compensation paid police officers or patrolmen on the 1st day of July of that year in the cities hereinbefore referred to. The board of supervisors shall thereupon have the power by ordinance to revise all of the rates of compensation as in this section provided. Said revised rates shall be effective from the 1st day of July of the then current fiscal year.

§ 35.5.1

If the board of supervisors revises said rates of compensation, then it shall, not later than the 25th day of July of the then current fiscal year, have the power, and it shall be its duty, subject to the fiscal provisions of the charter, but without reference or amendment to the annual budget, to amend the annual salary ordinance and the annual appropriation ordinance to include the provisions necessary for paying the rates of compensation fixed by the board of supervisors as in this section provided for the then current fiscal year.

On ratification of this section, the civil service commission shall immediately survey and certify to the board of supervisors the rates of compensation paid police officers or patrolmen on the 1st day of January, 1952, in the cities referred to hereinbefore. The board of supervisors shall thereupon have power, and it shall be its duty, by ordinance, to adjust the rates of compensation for the fiscal year 1952-1953 for all of said members of the police department based upon said certified report and as in this section provided; and, notwithstanding any other provision of this charter, it shall have the power, and it shall be its duty, without reference or amendment to the annual budget, to amend the annual appropriation ordinance and the annual salary ordinance for the fiscal year 1952-1953 to include the provisions necessary for paying said rates from July 1, 1952; provided, if additional funds are required, then provision shall be made for such payment out of such funds as the controller certifies are available for the purpose. Such funds as are made available shall first be applied to the payment of compensation for the period from the effective date of this section to June 30, 1953, and thereafter to the payment of such compensations for the period from the effective date of this section to July 1, 1952, and shall only apply to those persons who are members of the department on or after the effective date of this section.

The expression "rates of compensation," as used in this section in relation to said survey, is hereby declared to apply only to a basic amount of wages, with included range scales, and does not include such working benefits as might be set up by any other city by way of holidays, vacations, other permitted absences of any type whatsoever, overtime, night or split shift, or pay for specialized services within a classification or rank, or other premium pay

differentials of any type whatsoever. The foregoing enumeration is not exclusive, but it is the intent of this section that nothing other than a basic amount of wages, with included range scales, is to be included within the meaning of "rates of compensation."

Working benefits and premium pay differentials of any type shall be allowed or paid to members of the police department referred to herein only as is otherwise provided in this charter.

For all purposes of the retirement system, the expression "rates of compensation" as used in this section, shall mean "salary attached to the rank" as used in section 166 and, with the addition of fifteen dollars per month now provided in section 35.5 of the charter with respect to members assigned to two-wheel motorcycle traffic duty, shall also mean "compensation earnable" as used in section 168.1.1.

For all purposes of the retirement system, the first adjustment of rates of compensation made by the board of supervisors after the effective date of this section shall be the rates of compensation for the members affected for the remainder of the fiscal year 1952-1953 following the month in which the ordinance making such adjustment becomes effective and the annual compensations set forth in section 35.5 shall be rates of compensation for said retirement purposes for the period from the beginning of the fiscal year 1952-1953 through said month.

The term "police officers or patrolmen" as used in this section shall mean the persons employed in the police departments of said cities of 100,000 population or over or of the City and County of San Francisco, to perform substantially the duties being performed on the effective date of this section by police officers, police patrol drivers and women protective officers in the San Francisco Police Department. [*New section, 1952*]

SECTION 35.5.2. Not later than the fifteenth day of February of each year the civil service commission shall survey, and certify to the board of supervisors, any additional rate of pay paid to members assigned to two-wheel motorcycle traffic duty in the respective police department of all cities of 100,000 population or over in the State of California, based upon the latest decennial census.

§ 35.5.2

Not later than the first day of April of each year the board of supervisors shall have power, and it shall be its duty by ordinance to fix the additional rate of pay for the members of the police department who are assigned to two-wheel motorcycle traffic duty, at a rate of pay not to exceed the highest rate of compensation paid to members assigned to two-wheel motorcycle traffic duty in the cities included in the certified report of the civil service commission.

Not later than the second Monday of July of each year the civil service commission shall survey and certify to the board of supervisors any additional rate of pay to be paid to members assigned to two-wheel motorcycle traffic duty on the first day of July of that year in the cities hereinbefore referred to.

The board of supervisors shall thereupon have the power by ordinance to revise the additional rate of pay as in the section provided. Said revised rates shall be effective from the first day of July of the then current fiscal year.

If the board of supervisors revises said additional rate of pay then, it shall, not later than the 25th day of July of the then current fiscal year, have the power, and it shall be its duty, subject to the fiscal provisions of the charter, but without reference or amendment to the annual budget, to amend the annual salary ordinance and the annual appropriation ordinance to include the provisions necessary for paying the additional rate of pay for members assigned to two-wheel motorcycle traffic duty fixed by the board of supervisors as in this section provided for the then current fiscal year.

On ratification of this section the civil service commission shall immediately survey and certify to the board of supervisors the additional rate of pay paid to members assigned to two-wheel motorcycle traffic duty on the first day of January, 1958, in the cities referred to hereinbefore. The board of supervisors shall thereupon have power, and it shall be its duty by ordinance to adjust the rates of compensation for the fiscal year 1957-1958 for members assigned to two-wheel motorcycle traffic duty, based upon said certified report and as in this section provided; and, notwithstanding any other provision of this charter it shall have power, and it shall be its duty, but without reference or amendment to the annual budget, to amend the annual appropriation

ordinance and the annual salary ordinance for the fiscal year 1957-1958 to include the provisions necessary for paying said additional rate of pay from January 1, 1958; provided, however, that if additional funds are required then provisions shall be made for such payment out of such funds as the controller certifies are available for the purpose. Such funds as are made available shall first be applied to the payment of compensations for the period from the effective date of this section to June 30, 1958, and thereafter to the payment of the additional rate for the period from the effective date of this section to January 1, 1958, and shall only apply to those persons who are members of the department on and after the effective date of this section.

Said additional rate of pay shall be in addition to the rate of compensation provided for in section 35.5.1 of this charter.

In no event shall the additional rate so fixed be less than \$15.00 per month. [*New section, 1958*]

SECTION 35.5.3. Notwithstanding the provisions of section 35.5.1 or of any other provisions of this charter, the basic rate of compensation for the rank of lieutenant in the police department established under the provisions of section 35.5.1 for the fiscal year 1962-1963 shall be increased by six per cent (6%) and the resulting figure adjusted to the nearest dollar.

The provisions of this section shall be effective on the first day of the month immediately following the date of ratification of this amendment by the State Legislature and the adjusted basic rate of compensation for lieutenant computed as above provided shall be effective on that date and shall be paid for the remainder of the 1962-1963 fiscal year.

For the fiscal year 1963-1964 and subsequent fiscal years the basic rate of compensation for lieutenant shall be fixed in accordance with the provisions of section 35.5.1 of the charter.

The board of supervisors shall have the power, and it shall be its duty, without reference or amendment to the annual budget, to amend the annual appropriation ordinance and the annual salary ordinance for the fiscal year 1962-1963 to include the provisions necessary for paying the adjusted basic rate of compensation for the rank of lieutenant herein provided. [*New section, 1962*]

§ 35.5.4-35.6-35.7

SECTION 35.5.4. Notwithstanding the provisions of section 35.5.1 or of any other provisions of this charter, and effective on the first day of the month immediately following the date of ratification of this amendment by the state legislature, the monthly rate of compensation for the rank of assistant inspector in the police department for the balance of the fiscal year 1962-1963 shall be \$697.00.

For the fiscal year 1963-1964, and subsequent fiscal years, the rate of compensation for assistant inspector shall be fixed in accordance with the provisions of section 35.5.1 of the charter.

The board of supervisors shall have the power, and it shall be its duty, without reference or amendment to the annual budget, to amend the annual appropriation ordinance and the annual salary ordinance for the fiscal year 1962-1963 to include the provisions necessary for paying the rate of compensation for the rank of assistant inspector herein provided.

Provided, however, if any member of the department appointed as an assistant inspector is a sergeant at the time of the appointment or is appointed a sergeant thereafter, he shall receive the rate of compensation attached to the rank of sergeant. [*New section, 1963*]

SECTION 35.6. The chief of police may refuse to issue any permit that is subject to police department investigation and issuance, if it shall appear that the character of the business or the applicant requesting such permit does not warrant the issuance thereof, or he may revoke any such permit as soon as it shall appear that the business or calling of the person to whom it was granted is conducted in a disorderly or improper manner, or that the place in which the business is conducted or maintained is not a proper or suitable place in which to conduct or maintain such business or calling. [*New section, 1943*]

Under former § 35, providing for revocation of permits for operation of businesses in an improper manner, the chief of police had a clear right to revoke the permit of a pawnbroker for refusal to surrender stolen property. **Willer v. Quinn** (1935) 4 Cal. App. (2d) 663, 41 Pac. (2d) 572.

SECTION 35.7. In the suppression of any riot, public tumult, disturbance of the public peace or organized resistance against the laws or public authority, the chief of police, in the lawful

exercise of his functions, shall have all the powers that are now or that may be conferred on the sheriff by the laws of this state. [*New section, 1943*]

Chief of Police Contingent Fund

SECTION 35.8. The board of supervisors shall have the power to appropriate to the police department an amount not to exceed in any one fiscal year the sum of \$25,000 to be known as the contingent fund of the chief of police. The chief of police may from time to time, disburse such sums from such fund as in his judgment shall be for the best interests of the city and county in the investigation and detection of crime, and the police commission shall allow and order paid out of such contingent fund, upon orders signed by the chief of police, such amounts as may be required. [*Amended, 1957*]

Chief of Police Narcotic Fund

SECTION 35.8.1. The board of supervisors shall have the power to appropriate to the police department an amount not to exceed in any one fiscal year the sum of \$25,000 to be known as the narcotic fund of the chief of police. The chief of police may from time to time, disburse such sums from such fund as in his judgment shall be for the best interests of the city and county in the enforcement of the narcotic laws, and the police commission shall allow and order paid out of such narcotic fund, upon orders signed by the chief of police, such amounts as may be required. [*New section, 1959*]

SECTION 35.9. At his discretion or upon the petition of any person, firm or corporation, the chief of police may appoint, and at his pleasure remove special police officers. Such officers shall be subject to all the rules and regulations of the department. [*New section, 1934*]

SECTION 35.10. The police commission may appoint patrol special officers and for cause may suspend or dismiss said patrol special police officers after a hearing on charges duly filed with the commission and after a fair and impartial trial. Each patrol special police officer shall be at the time of his appointment not less than twenty-one years of age nor more than forty years of age and must possess such physical qualifications as may be required by the commission. Age qualifications shall not apply to present patrol special police officers acting as such at the time of the effec-

tive date of this amendment nor to their reappointment. Patrol special police officers who are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by said commission or the legal heirs or representatives of said owners, may dispose of their interest in said beat or territory to a person of good moral character, approved by the police commission and eligible for appointment as a patrol special police officer. [*New section, 1943*]

A patrol special police officer appointed pursuant to this section is an employee of San Francisco within § 172. **San Francisco v. Industrial Acc. Comm.** (Odom) (1947) 12. C. Comp. Cas. 207; **San Francisco v. Industrial Acc. Com.** (Pate) (1947) 12 C. Comp. Cas. 112.

SECTION 35.11. On the recommendation of the chief of police, the commission may reward any member of the department for heroic or meritorious conduct. The form or amount of said reward to be descretionary with the commission, but not to exceed one month's salary in any one instance. [*New section, 1943*]

SECTION 35.12. The chief of police shall have the power, by regulation, to provide for the care and restitution of property that may come into possession of any officer or employee thereof, and the sale at public auction of all such unclaimed property, as well as the disposition of such porperty as shall consist of weapons or articles used or that may be used in the commission of crime, or the sale or disposition of which is prohibited by law. [*New section, 1943*]

SECTION 35.13. This amendment shall become effective when the joint legislative resolution approving such amendment is filed with the secretary of state, and the board of supervisors has appropriated the funds necessary in connection therewith, but not later than July 1, 1943. [*New section, 1943*]

Under this section, the increase in pay rates did not begin when the resolution of approval was filed but when the appropriation was made. **Callahan v. San Francisco** (1945) 68 Cal. App. (2d) 286, 156 Pac. (2d) 479.

Fire Department

SECTION 36. The fire department shall be under the management of a fire commission, consisting of three members, who shall

be appointed by the mayor and each of whom shall receive an annual compensation of twelve hundred dollars (\$1,200). The term of each commissioner shall be four years, commencing at twelve o'clock noon on the 15th day of January in the years of 1948, 1949 and 1950 respectively.

The fire commission shall appoint a chief of department, a secretary and a department physician who shall hold office at its pleasure.

The fire commissioners shall be successors in office of the fire commissioners holding office in the city and county at the time this charter shall go into effect, and shall have all the powers and duties thereof, except as in this charter otherwise provided. The commissioners shall have power, upon recommendation of the chief of department, to send fire boats, apparatus and men outside the City and County of San Francisco for fire-fighting purposes.

Positions of officers and employees of the fire department legally authorized shall continue, and the incumbents therein legally appointed thereto shall continue as the officers and employees of the department under the conditions governing their respective appointments, and except as in this charter otherwise provided.

The several ranks in the fire department shall be: chief of department; deputy chief of department; chief, division of fire prevention and investigation; first assistant and second assistant chiefs of department; secretary to chief of department; battalion chiefs; supervisor of assignments, captains; lieutenants, inspector of fire department apparatus; engineers; chief's operators; drivers; tillermen; truckmen; hosemen; pilots of fire boats and marine engineers of fire boats; and the ranks specified in section 38.01 and 38.1 of this charter. The compensation for these ranks shall be determined as provided in section 36.2 of this charter.

The chief of department shall recommend and the fire commission shall provide by rule for work schedules or tours of duty for the officers and members occupying the several ranks of the fire department, provided however that all tours of duty established for officers and members assigned to the fire fighting companies, including the salvage corps, shall start at eight o'clock A.M. No such officer or member shall be required to work more than one hundred and twenty (120) hours in any fifteen-day period, nor shall any officer or member be required to work more

than twenty-four consecutive hours except in case of a conflagration requiring the services of more than one-half of the force of the department. Officers and members may exchange watches with permission of the chief of department and time worked on such exchange of watches shall not be construed as time in violation of the limitation of 120 hours in any fifteen-day period nor twenty-four consecutive hours. Each such officer and each such member shall be entitled to at least one (1) day off duty during each week.

When, in the judgment of the fire commission, it is in the public interest that any such officer or member shall work on his day off and said officer or member consents to so work, he may at the direction of the chief of department work on said day off, and in addition to the regular compensation provided for said officer or member as set forth in this charter, said officer or member shall be entitled to be compensated at his regular rate of pay as provided for herein for said extra time served, or he shall be allowed the equivalent time off.

In any computation in the administration of the San Francisco City and County Employees' Retirement System in which the compensation, as defined in any provisions relating to the retirement system, is a factor, compensation for overtime provided for in this section shall be excluded, and no such overtime compensation shall be deemed as compensation for any purpose relating to such retirement provisions.

On the recommendation of the chief of department, the commission may reward any officer or member of the department for heroic or meritorious conduct, the form or amount of said award to be discretionary with the fire commission, but not to exceed one month's salary in any one instance.

Officers and members of the uniformed force shall be entitled to the days declared to be holidays for employees whose compensations are fixed on a monthly basis in the schedule of compensations adopted by the board of supervisors, pursuant to the provisions of section 151 of the charter, as additional days off with pay. Officers or members required to perform service in said departments on said days shall be compensated on the basis of straight time as herein computed or shall be granted equivalent time off duty with pay in the judgment of the fire commission.

For payroll purposes, that portion of each tour of duty which

§ 36-36.1

falls within each calendar day shall constitute a single tour of duty. The rate of compensation for the service performed by officers or members on a holiday or for service performed on an assigned day off, as in this charter provided, shall be calculated by dividing the annual rates of pay for each fiscal year by the number of single tours of duty as scheduled for the several ranks in the fire fighting companies in said fiscal year.

The chief of department or, in his absence, the deputy chief or any assistant chief of department or, in their absence any battalion chief in charge, may, during a conflagration, cause to be cut down or otherwise removed any buildings or structures for the purpose of checking the progress of such conflagration.

The absence of any officer or member of the fire department on military leave of absence, as defined by section 153 of this charter, shall be reckoned a part of his service under the city and county, for the purpose of computing years of service in gaining added compensation as provided in this charter. [*Amended, 1940; 1943; 1946; 1947; 1948; 1951; 1956*]

The fact that the board of supervisors deemed it advisable to submit amendments to § 35 and this section jointly as a single proposition on the ballot in 1943, did not convert them into a single amendment and give rise to a patent ambiguity by virtue of the different language with reference to the effective dates of the amendments. **Callahan v. San Francisco** (1945) 68 Cal. App. (2d) 286, 156 Pac. (2d) 479.

Under the 1943 amendment to this section providing that it should become effective when the joint legislative resolution was filed, and the increased salaries should be payable only when the proper appropriation had been made, the pay raise did not commence until the board of supervisors made the necessary appropriation. **Callahan v. San Francisco** (1945) 68 Cal. App. (2d) 286, 156 Pac. (2d) 479.

SECTION 36.1. (a) The tours of duty provided for in section 36 of this charter and the length thereof, and the platoon system provided for in said section for the officers and members of the uniformed ranks shall continue as now set forth in said section.

(b) Each member of the uniformed force shall be entitled to at least one (1) day off in each seven (7) and such additional days or time off as may be approved by the fire commission.

(c) When, in the judgment of the fire commission, it is in the public interest that any member of the uniformed force of said fire department should work on his day off and said member con-

sents to so work, he may at the direction of the chief engineer of the department work on said day off, and in addition to the regular compensation provided for said member as set forth in section 36 of this charter, said member shall be entitled to be compensated at his regular rate of pay as provided for in section 36 for said extra time served.

(d) Each member of the uniformed force of the fire department shall be entitled to a vacation period of two (2) weeks as provided for in section 151 of this charter, provided, however, that if in the judgment of the fire commission it is in the public interest that any member of the said department should continue his service to the department during his vacation period, and said member consents to continue his said service, the chief engineer of the department may permit said member to continue such service, and said member shall in addition to his annual vacation pay, be paid additional compensation for said vacation period, which said compensation shall be equal to the vacation pay allowed to said member of the department.

(continued on following sheet)

(e) Salary warrants for extra time served by officers and members of the uniformed force of the department shall be payable from the regular salary appropriation of said uniformed force for the prevailing fiscal year, and at no time shall extra compensation be authorized or paid in amounts exceeding the available unencumbered balance in said appropriation.

(f) Nothing in this section contained shall in any way interfere with the sick or disability leave provided for in Section 301, Part I, of the San Francisco Municipal Code.

(g) This section shall be effective on the first day of July, if the same is ratified prior thereto by the Legislature of the State of California, and if not so ratified shall be effective within fifteen (15) days after the date of its ratification.

(h) The provisions of this section shall continue in force for a period of six (6) months after the termination of the present war between the United States and the axis powers. [*New section, 1944*]

SECTION 36.11½. Subject to the provisions of section 20 of the charter governing the appointment and removal of non-civil service officers, assistants and employees, and without competitive examination, the chief of department shall have the power to appoint, from among the members of the department having the rank of first or second assistant chief of department, a deputy chief of department and, from among the members of the department having the rank of battalion chief, a secretary to the chief of department.

This section shall become effective on the first day of July, 1951. [*New section, 1948; amended, 1951*]

SECTION 36.2. Not later than the 15th day of February of each year, the civil service commission shall survey and certify to the board of supervisors rates of compensation paid firemen employed in the respective fire departments in all cities of 100,000 population or over in the State of California, based upon the latest federal decennial census.

Not later than the 1st day of April of each year, the board of supervisors shall have the power, and it shall be its duty, by ordi-

nance, to fix rates of compensation for the members of the fire department whose annual compensations are set forth or otherwise provided in sections 36 and 38.1 of this charter, and said rates shall be in lieu of said annual compensations and shall be effective on the 1st day of July next following.

The rates of compensation, fixed in said ordinance,

(a) for the fourth year of service and thereafter for firemen shall not exceed the highest rate of compensation paid firemen in regular service in the cities included in the certified report of the civil service commission;

(b) for the first, second and third year of service for firemen shall include the same amount of adjustment as that used in fixing the rates of compensation for the fourth year of service for the same class;

(c) for said members of the fire department other than firemen shall include the same per cent of adjustment as that established by said ordinance for firemen in the fourth year of service; and

(d) shall be set at the dollar amount nearest the fractional amount which may result from percentage adjustment specified in this section, half dollars being taken to the next higher dollar amount.

The rates of compensation set forth in the budget estimates, the budget and the annual salary ordinance shall be those fixed by the board of supervisors as in this section provided and appropriations therefor shall be based thereon.

Not later than the 2nd Monday of July each year, the civil service commission shall survey and certify to the board of supervisors the rates of compensation paid firemen on the 1st day of July of that year in the cities hereinbefore referred to. The board of supervisors shall thereupon have the power by ordinance to revise all of the rates of compensation as in this section provided. Said revised rates shall be effective from the 1st day of July of the then current fiscal year.

If the board of supervisors revises said rates of compensation, then it shall, not later than the 25th day of July of the then current fiscal year, have the power, and it shall be its duty, subject to the fiscal provisions of the charter, but without reference or amendment to the annual budget, to amend the annual salary

ordinance and the annual appropriation ordinance to include the provisions necessary for paying the rates of compensation fixed by the board of supervisors as in this section provided for the then current fiscal year.

On ratification of this section, the civil service commission shall immediately survey and certify to the board of supervisors the rates of compensation paid firemen on the 1st day of January, 1952, in the cities referred to hereinbefore. The board of supervisors shall thereupon have power, and it shall be its duty, by ordinance, to adjust the rates of compensation for the fiscal year 1951-1953 for all of said members of the fire department based upon said certified report and as in this section provided; and, notwithstanding any other provision of this charter, it shall have the power, and it shall be its duty, without reference or amendment to the annual budget, to amend the annual appropriation ordinance and the annual salary ordinance for the fiscal year 1952-1953 to include the provisions necessary for paying said rates from July 1, 1952; provided, if additional funds are required, then provision shall be made for such payment out of such funds as the controller certifies are available for the purpose. Such funds as are made available shall first be applied to the payment of compensation for the period from the effective date of this section to June 30, 1953, and thereafter to the payment of such compensations for the period from the effective date of this section to July 1, 1952, and shall only apply to those persons who are members of the department on or after the effective date of this section.

The expression "rates of compensation," as used in this section, in relation to said survey, is hereby declared to apply only to a basic amount of wages, with included range scales, and does not include such working benefits as might be set up by any other city by way of holidays, vacations, other permitted absences of any type whatsoever, overtime, night or split shift, or pay for specialized services within a classification or rank, or other premium pay differentials of any type whatsoever. The foregoing enumeration is not exclusive, but it is the intent of this section that nothing other than a basic amount of wages, with included range scales, is to be included within the meaning of "rates of compensation."

Working benefits and premium pay differentials of any type shall be allowed or paid to members of the fire department referred to herein only as is otherwise provided in this charter.

§ 36.2-36.2.1

For all purposes of the retirement system, the expression "rates of compensation," as used in this section shall mean "salary attached to the rank" as used in section 169 and "compensation earnable" as used in section 171.1.1.

For all purposes of the retirement system, the first adjustment of rates of compensation made by the board of supervisors after the effective date of this section shall be the rates of compensation for the members affected for the remainder of the fiscal year 1952-1953 following the month in which the ordinance making such adjustment becomes effective, and the annual compensations set forth in section 36 shall be the rates of compensation for said retirement purposes for the period from the beginning of the fiscal year 1952-1953 through said month.

The term "firemen" as used in this section shall mean the persons employed, in the fire departments of said cities of 100,000 population or over or of the City and County of San Francisco, to perform substantially the duties being performed on the effective date of this section by drivers, stokers, tillermen, truckmen, or hosemen, in the San Francisco Fire Department.

The expression "members of the fire department" does not include members of the fire commission. [*New section, 1944; repealed, 1946; new section, 1952*]

SECTION 36.2.1. Notwithstanding the provisions of section 36.2 or of any other provision of this charter, the basic rates of compensation for any rank of captain in the fire department, for pilots of fire boats, and for marine engineers of fire boats, established under the provisions of section 36.2 for the fiscal year 1962-1963, shall be increased by six per cent (6%) and the resulting figures adjusted to the nearest dollar.

The provisions of this section shall be effective on the first day of the month immediately following the date of ratification of this amendment by the State Legislature and the adjusted basic rates of compensation computed as above provided shall be effective on that date and shall be paid for the remainder of the 1962-1963 fiscal year.

For the fiscal year 1963-1964 and subsequent fiscal years the basic rate of compensation for the aforesaid ranks in the fire

department shall be fixed in accordance with the provisions of section 36.2 of the charter.

The board of supervisors shall have the power, and it shall be its duty, without reference or amendment to the annual budget, to amend the annual appropriation ordinance and the annual salary ordinance for the fiscal year 1962-1963 to include the provisions necessary for paying the adjusted basic rates of compensation herein provided. [*New section, 1962*]

Fire Marshal

SECTION 37. The chief of the fire department, with the approval of the fire commission, may appoint a fire marshal and assistants on the recommendation of the Underwriters Fire Patrol of San Francisco, to serve without compensation from the city and county. The board of supervisors may empower the fire marshal to sell property saved or salvaged from any fire and for which no owner can be found. The fire marshal may call upon police officers to assist in the protection or salvaging of property and shall have such other powers and duties as by ordinance may be prescribed relative to the protection of property at fires and the storage of property salvaged therefrom. He shall have such duties appertaining to the enforcement of laws relative to the storage, sale and use of oils, combustible materials and explosives as the fire commission by rule, or the supervisors by ordinance, may prescribe.

Fire Prevention

SECTION 38. The bureau of fire prevention and public safety under the jurisdiction of the fire commission is hereby established. The commission shall detail to said bureau from the uniformed force of the department an officer to have charge of said bureau and such other personnel as it may deem necessary, who shall be paid the salary or salaries for their respective ranks in the fire department. The bureau shall inspect all structures and premises to determine whether or not compliance is being had with statutes and ordinances relative to fire prevention, fire protection and fire-spread control, and the protection of persons and property from fire. It shall enforce said statutes and ordinances and shall report violations to departments having jurisdiction.

The bureau shall examine the application, plans and specifications for the erection, and for alterations or repairs estimated to exceed \$1,000 in cost, of any structure or premises subject to the statutes and ordinances referred to in this section. The bureau shall by written report, filed with the superintendent of building inspection, approve such plans and specifications, or report to said superintendent the particulars wherein non-compliance exists, and upon modification of the application, plans and specifications to comply therewith, the bureau shall inform said superintendent of its approval. No permit for alteration or repair exceeding \$1,000 in cost, or for erection, shall be issued unless said approval is given.

The fire commission, relative to permits subject to issuance or revocation by the chief of department, shall, by regulation, prescribe such duties of the bureau of fire prevention as it shall deem appropriate. Any structure or premises wherein there exists any violation of statutes and ordinances referred to in this section, or which is maintained or used in such manner as to endanger persons or property by hazard of fire, explosion or panic and any structure or premises hereafter constructed, altered or repaired in violation of said statutes and ordinances is hereby declared to be a public nuisance, and it shall be the duty of the bureau to prosecute abatement proceedings. [*Amended, 1954*]

Fire Investigation

SECTION 38.01. Notwithstanding the provisions of section 38 of the charter, the following ranks are hereby established within the

fire department as of July 1, 1953; captain, bureau of fire prevention and public safety; lieutenant, bureau of fire prevention and public safety; lieutenant, bureau of fire investigation; inspector, bureau of fire prevention and public safety; and investigator, bureau of fire investigation. Any member of the fire department now assigned as captain, bureau of fire prevention and public safety, lieutenant, bureau of fire prevention and public safety, lieutenant bureau of fire investigation, inspector, bureau of fire prevention and public safety, or investigator, bureau of fire investigation, shall, if he has been performing such duties on July 1, 1952 and continuously thereafter for the period of one year, or for a period of one year from July 1, 1951 to July 1, 1952 inclusively, be declared permanently appointed to such rank as if appointed thereto after examination and certification from a list of eligibles under the civil service provisions of this charter, and thereafter shall hold such position under the civil service provisions of this charter; provided that as to any member assigned to either of said bureaus who is or was on military leave during any of the periods of time above stated such military leave shall be considered as service in the assignment from which leave was granted.

Vacancies existing in the several ranks established by this section shall be subject to competitive examination, and the provisions of section 146 of the charter relating to the fire department shall apply except as otherwise provided herein. Personnel of the fire department eligible to participate in an examination for the rank of captain, bureau of fire prevention and public safety shall come from the rank of captain. Personnel of the fire department eligible to participate in examinations for the rank of lieutenant, bureau of fire prevention and public safety and lieutenant, bureau of fire investigation shall come from the rank of lieutenant. Personnel of the fire department eligible to participate in examinations for the rank of inspector, bureau of fire prevention and public safety and investigator, bureau of fire investigation shall come from the ranks of hoseman, truckman and chief's operator. Nothing in this section shall prohibit captain, bureau of fire prevention and public safety nor captain from participating in an examination for the rank of battalion chief. Nothing in this section shall prohibit lieutenant, bureau of fire prevention and public safety nor lieutenant, bureau of fire investigation nor lieutenant from participating in an examination for the rank of captain. The ranks of inspector, bureau of

fire prevention and public safety and investigator, bureau of fire investigation shall be considered equal with the ranks of chief's operator, hoseman and truckman for promotional examination to the rank of lieutenant.

The rates of compensation for the ranks of captain, bureau of fire prevention and public safety and lieutenant, bureau of fire prevention and public safety and lieutenant, bureau of fire investigation shall be \$20.00 per month in addition to the amounts provided for the ranks of captain and lieutenant as provided for in section 36.2 of the charter. The rates of compensation for the ranks of inspector, bureau of fire prevention and public safety and investigator, bureau of fire prevention and public safety and investigator, bureau of fire investigation shall be the same as for the rank of chief's operator as provided in section 36.2 of the charter. *[New section, 1953]*

Salvage Corps

SECTION 38.1. There is hereby created in the San Francisco fire department a division to be known as the salvage corps.

The duties of said salvage corps shall be the protection of property, during the period of any fire and immediately after said fire, from damage by smoke, water or flames. Said salvage corps shall be under the jurisdiction of the fire commission of the City and County of San Francisco. The personnel of said salvage corps shall not be transferred to any other branch or division of the fire department but shall at all times be subject to the orders of the chief engineer of the department in so far as actual service is concerned. The personnel of said salvage corps may be increased in accordance with the fiscal and budgetary procedure provided for in the charter, but members of any other branch or division of said fire department shall not be transferred to said salvage corps except after examination and certification as to eligibility by the civil service commission.

All persons employed in the uniformed force of the corporation known as the Underwriters' Fire Patrol of San Francisco, on the effective date of this amendment and who have been so employed for a period of six months next before the effective date of this amendment shall become members of said salvage corps and shall be deemed appointed as such in accordance with the civil service

provisions of the charter and shall thereafter be entitled to all of the benefits thereof. Any person heretofore employed in the uniformed force of said Underwriters' Fire Patrol of San Francisco who has been granted a leave of absence for **military purposes and** who has been so employed by said Underwriters' Fire Patrol of San Francisco for a period of six months next before the granting of said leave of absence, shall, on the expiration of his said leave, become a member of said salvage corps and also shall be deemed appointed thereto pursuant to the civil service provisions of the charter and entitled to all of the benefits thereof.

All persons who, on the effective date of this amendment, shall be serving as officers in said uniformed force of said Underwriters' Fire Patrol of San Francisco and who have been so serving for a period of six months prior thereto, shall continue to occupy their respective official positions, with the exception that such persons as may be serving in the position of sergeant shall become lieutenants in said salvage corps and the position of sergeant shall no longer exist.

The officers and members of said salvage corps shall receive respectively the salaries provided for captains, lieutenants and hosemen provided by section 36 of the charter **and for the purpose** of determining the salaries of said hosemen, service rendered in the uniformed force of said Underwriters' Fire Patrol of San Francisco shall be deemed as service rendered in the service of the City and County of San Francisco.

Upon the actual taking over of the employees of said Underwriters' Fire Patrol of San Francisco, the members thereof coming into the employment of the City and County of San Francisco shall become members of the San Francisco city and county retirement system and shall be entitled to the benefits thereof and subject to the obligations thereof pursuant to the provisions of **section 165** of the charter.

All employees hereafter added to said salvage corps, **including** officers appointed thereto, other than those who may have been serving in the uniformed forces of said Underwriters' Fire Patrol of San Francisco and continue in the service of the City and County of San Francisco pursuant to the provisions of this section, shall be appointed and hold their positions subject to the civil service provisions of the charter.

The tours of duty of the members of said salvage corps shall be the same as the tours of duty for other members of the uniformed force of the fire department as the same are set forth in section 36 of the charter.

The physical and age requirements for future applicants and members of the salvage corps shall be the same as those applicable to applicants for and regular members of equal rank in the San Francisco fire department.

This amendment shall become effective when the joint legislative resolution approving such amendment is filed with the secretary of state, and the board of supervisors has appropriated the funds necessary in connection therewith, but not later than July 1, 1943. [*New section, 1943*]

Salvage Corps—Military Leave Provisions

SECTION 38.2. Notwithstanding any other provisions of this charter, any person employed on July 1, 1943, in the uniformed force of said Underwriters' Fire Patrol of San Francisco who was absent from his duties therein on account of military service and who had been so employed by said Underwriters' Fire Patrol of San Francisco for a period of six (6) months next before July 1, 1943, is deemed a member of said salvage corps on July 1, 1943, on military leave from his position therein and is deemed appointed thereto on July 1, 1943, pursuant to the civil service provisions of the charter and entitled from said date to all of the benefits of such employment. [*New section, 1947*]

Curtailment or Discontinuance of Fireboat Operation

SECTION 38.3. In the event that the services of any pilot, marine engineer or marine fireman holding permanent civil service status as such hereinafter referred to as the said member, are no longer required in connection with fireboat operation due to curtailment of such operation by the City and County of San Francisco or due to the conversion from steam fireboats to motorized fireboats the said member on the basis of seniority in rank may be reassigned to duties of a position of some other rank in the fire department in which a vacancy in a permanent position exists and not carrying a higher compensation than the compensation of the rank previously held by said member, as the chief of department, with the

approval of the fire commission shall determine are within the said member's ability to perform, below the rank of lieutenant, provided however, said member shall not be eligible for promotional examination in the fire department. Upon such reassignment the said member shall be declared to be permanently appointed to such new rank as if appointed thereto after examination and certification from a list of eligibles under the civil service provisions of this charter, and he shall have seniority therein from date of such reassignment and he shall receive the same rate of pay as would be applicable to any other member of such new rank having the same number of years of service in the department under the provisions of section 36.2 of the charter. If no vacancy in a permanent position exists to which immediate reassignment may be made as indicated above, then such member shall be laid off from his position subject to reassignment as indicated above when such a vacancy does occur.

If at any time after such reassignment the said member's original position, or a similar position becomes available on fireboats under jurisdiction of the San Francisco Fire Department the said member shall be assigned to such position in accordance with his seniority in rank in the department, preference in such assignment being given to the said member having the greatest seniority. Upon such assignment the said member shall be declared to be reappointed to the rank he held at the time he was transferred from such fireboat service and shall be restored to all the civil service rights and privileges appurtenant thereto, including such additional rights and privileges as may have accrued by reason of added seniority.

Nothing in this section shall affect the said member's pension and retirement rights and privileges under sections 168.3 and 171.

The chief of department, the board of fire commissioners, the civil service commission, the controller and the board of supervisors shall perform all acts necessary to carry out the provisions of this section. [*New section, 1954*]

Board of Permit Appeals

SECTION 39. The mayor shall appoint five qualified electors, other than city and county officials or employees, for terms of four years, to constitute a board of permit appeals. The compensation

for each member shall be fifteen dollars (\$15) per meeting of the board actually attended by such members provided that the total amount paid all members of the board shall not exceed five thousand dollars (\$5,000) per year. The persons first appointed shall determine their terms by lot so that one such term shall expire at twelve o'clock noon on the 15th day of January in each of the years 1933, 1934 and 1935, and the remaining two terms at twelve o'clock noon on the 15th day of January, 1936, and upon these and successive expirations the mayor shall appoint their successors for four-year terms.

Any applicant for a permit or license who is denied such permit or license by the department authorized to issue same, or whose license or permit is ordered revoked by any department, or any person who deems that his interests or property or that the general-public interest will be adversely affected as the result of operations authorized by or under any permit or license granted or issued by any department, may appeal to the board of permit appeals. Such board shall hear the applicant, the permit-holder, or other interested parties, as well as the head or representative of the department issuing or refusing to issue such license or permit, or ordering the revocation of same. After such hearing and such further investigation as the board may deem necessary, it may concur in the action of the department authorized to issue such license or permit, or, by the vote of four members, may overrule the action of such department and order that the permit or license be granted, restored or refused.

In its appellate jurisdiction the board of permit appeals under this section is an administrative tribunal empowered to exercise full discretion in passing on the matter as submitted for decision. The authority of the board is not confined to a determination of whether there has been a compliance with ordinances regulating permit procedure. **Lindell Co. v. Board of Permit Appeals** (1943) 23 Cal. (2d) 303, 144 Pac. (2d) 4; **Greif v. Dullea** (1944) 66 Cal. App. (2d) 986, 153 Pac. (2d) 581.

The board of permit appeals acting under this section is not required to set forth the reason for its action at the conclusion of a hearing or a rehearing. **Lindell Co. v. Board of Permit Appeals** (1943) 23 Cal. (2d) 303, 144 Pac. (2d) 4.

An ordinance provision for rehearings in matters relating to permits is consistent with the discretion conferred upon the board of permit appeals in passing upon a case on appeal under the authority of this section providing that after "hearing and such further investigation as the board may deem necessary" the board may concur in department action or overrule it. **Lindell Co. v. Board of Permit Appeals** (1943) 23 Cal. (2d) 303, 144 Pac. (2d) 4.

The jurisdiction of the board of permit appeals is very broad. It may hear appeals on the record, it may try the cause de novo or it may make

its own investigation and its own independent order based thereon. **Greif v. Dullea** (1944) 66 Cal. App. (2d) 986, 153 Pac. (2d) 581.

The board of permit appeals may take notice of permit and license ordinances as part of its function under this section to review the acts of departments authorized to issue, grant or deny licenses or permits. **Greif v. Dullea** (1944) 66 Cal. App. (2d) 986, 153 Pac. (2d) 581.

Cited in **Willer v. Quinn** (1935) 4 Cal. App. (2d) 663, 41 Pac. (2d) 572.

Recreation and Park Department

SECTION 40. The recreation department and the park department are hereby consolidated into one department, to be known as the recreation and park department, which shall be under the management of a recreation and park commission. The recreation and park department and the recreation and park commission shall be, respectively, the successors in all regards of the recreation department and the park department and of the recreation commission and the park commission, which departments, commissions and offices of commissioner thereof shall cease to exist.

A recreation and park commission is hereby created, the members of which shall serve as commissioners thereof without compensation. Said commission shall consist of seven members, who shall be appointed by the mayor for a term of four years; provided that the respective terms of office of those first appointed shall be as follows: two for two years, two for three years, and three for four years from the effective date of this section. Vacancies occurring in the offices of appointive members, either during or at expiration of term, shall be filled by the mayor. Not less than two members of said commission shall be women.

This section and sections 41 and 42 as herein amended, shall take effect on the filing with the secretary of state of the legislative resolution of approval thereof, except that the existing commissions and departments shall continue for all purposes pertaining to the current fiscal year until the first day of the fiscal year next succeeding the filing of such resolution and the recreation and park commission shall have power prior to such date only in relation to matters pertaining to its own organization and to such next succeeding fiscal year and thereafter. [*Amended, 1941; 1949*]

Organization of Department

SECTION 41. The recreation and park commission shall appoint a general manager, who shall hold office at the pleasure of the commission. The commission shall also appoint a secretary, subject to

the civil service provisions of this charter.

The general manager shall be the chief executive officer of the department. Subject to the approval of the commission, he shall have power to appoint and to remove a superintendent of recreation, a superintendent of parks, a director of the zoo, an executive secretary to the general manager, and a director of the Strybing Arboretum and Botanical Gardens, all of whom shall be exempt from the civil service provisions of this charter, and shall hold office subject to such power of removal on approval of the commission. The position of director of Strybing Arboretum and Botanical Gardens shall be held only by a person who possesses the educational and administrative qualifications and experience necessary to direct and administer a complete program for the development, operation and maintenance of an arboretum and botanical garden.

The civil service rights of persons employed under the civil service provisions of this charter in either the recreation or park departments shall continue in the recreation and park department. Seniority of any such employees who acquired civil service status in either the recreation department under the provisions of section 42 of the charter as effective January 8, 1932, or in the park department under the provisions of section 40 of the charter as amended and effective January 21, 1941, shall be determined for all purposes in each instance by the date of commencement of full-time continuous service with either the recreation or park departments. If records of the date of commencement of full-time continuous service do not exist or are inadequate in any instance from which to determine such date with certainty, other proof may be received. [*Amended, 1949; 1959*]

Former charter § 41 construed (see § 42) in *San Francisco v. Linares* (1940) 16 Cal. (2d) 441, 106 Pac. (2d) 639.

Sale, Abandonment or Discontinuance of Use of Land Held for Park Purposes

SECTION 41.1. Notwithstanding any other provisions of this charter, whenever lands which are or shall be used or intended for use for parks or squares are no longer needed for park or recreational purposes, such lands may be sold or otherwise disposed of, or their use for park purposes may be abandoned or discontinued;

provided that nothing herein shall be construed to authorize the discontinuance or abandonment of the use of such lands, or any change in the use thereof which will cause the reversion of such lands to private ownership, or cause the forfeiture of the ownership thereof in fee by the City and County of San Francisco, or as authorizing the discontinuance of the use of park lands acquired in any proceeding wherein a local assessment based on benefits was or shall be levied to provide funds for such acquisition; and provided further that the general laws of the State of California authorizing municipal corporations to abandon or to discontinue the use of land for park purposes, authorizing the sale or other disposition of such lands, and providing procedures therefor and for matters relating thereto, shall be applicable to the City and County of San Francisco and to all lands held or used by it for park purposes and shall govern and control exclusively in respect thereto. [*New section, 1949*]

Control and Use of Property—Tax Levy

SECTION 42. The recreation and park commission shall have the complete and exclusive control, management and direction of the parks, playgrounds, recreation centers and all other recreation facilities, squares, avenues and grounds which are in the charge of either of said commissions on the effective date hereof, or are thereafter placed in the charge of this commission, including exclusive power to erect and to superintend the erection of buildings and structures thereon, and to construct new parks, squares, playgrounds and recreation centers, except as in this charter otherwise provided.

It shall be the policy of the commission to promote and foster a program providing for organized public recreation of the highest standard.

The commission, through the general manager, shall utilize the property under its control and organize the personnel under its

direction, to the end that all functions of the department be performed with the greatest possible efficiency.

The San Francisco Unified School District shall supervise and direct recreational activities in facilities under its jurisdiction, and the commission and the school district shall have the power to supervise and direct other adjacent recreational and park facilities either jointly or severally by agreement.

The commission shall not lease any part of the lands under its control nor permit the building or maintenance or use of any structure on any park, square, avenue or ground, except for recreation purposes, and each letting or permit shall be subject to approval of the board of supervisors by ordinance, but the commission may lease to the highest responsible bidder for a term of not to exceed fifty years and upon such other terms and conditions as it may determine, subsurface space under any public park or square and the right and privilege to conduct and operate therein a public automobile parking station, provided that the said construction, when completed, and the operation will not be, in any material respect or degree, detrimental to the original purpose for which said park or square was dedicated or in contravention of the conditions of any grant under which said park or square might have been received. The revenues derived from any such lease shall be credited to the recreation and park department fund.

The recreation and park commission shall have the power to lease or rent any stadium or recreation field under its jurisdiction for athletic contests, exhibitions and other special events and may permit the lessee to charge an admission fee.

The amount of money to be provided by tax levy for recreation and park purposes shall not be less than the total of the amounts now or hereafter provided for parks and squares and for playgrounds under the provisions of section 78 of this charter. [*Amended, 1943; 1945; 1949*]

In the adoption of former § 41 (prior to amendment of 1949) the city acted under the constitutional grant of power in Const. Art. VI, Secs. 8, 8a, 8½, and in thus dealing with its own lands it was not restricted by any constitutional provision. **San Francisco v. Linares** (1940) 16 Cal. (2d) 441, 106 Pac. (2d) 639.

It was within the powers granted under this section to the board of park commissioners to execute a lease of the subsurface space beneath Union Square for the purpose of erecting and constructing thereon a public automobile garage even though this entailed a temporary suspension of surface use during construction and a permanent use of a small portion of the surface for entrances and exits. **San Francisco v. Linares** (1940) 16 Cal. (2d) 441, 106 Pac. (2d) 639.

Although this section grants to the park commission the exclusive control and management of parks, including the exclusive right to erect and to superintend the erection of buildings, the authority may not be exercised in such manner as to create a public nuisance. **Hassel v. San Francisco** (1938) 11 Cal. (2d) 168, 78 Pac. (2d) 1021.

Library Department

SECTION 43. The library department shall be under the management of a library commission consisting of eleven members who shall be appointed by the mayor and shall serve without compensation.

The eleven library trustees constituting the board of library trustees in office at the time this charter shall go into effect shall, by lot, classify their respective terms of office so that three of such terms shall begin at twelve o'clock noon on the 15th day of January, 1932, 1933, and 1934, respectively, and two such terms shall begin at twelve o'clock noon on the 15th day of January, 1935. The term of each commissioner shall be four years, at the expiration of which the mayor shall appoint his successor.

The library commission shall appoint a librarian and a secretary who shall hold office at its pleasure. The librarian shall be the chief executive of the department and shall be the appointing officer for the department as provided in section 20 of the charter.

Commencing on the 1st day of January, 1942, all positions in the library department except those of librarian and secretary of the library commission and part time services carrying compensation of less than \$80 per month including valuation of maintenance or other allowances shall be subject to the civil service provisions of this charter, and upon said date, any incumbent of such position in the library department, hereby made subject to civil service, who shall have held such position continuously for one year prior thereto, shall be deemed appointed to such position under the civil service provisions of this charter.

The library commission shall be the successors in office of the board of library trustees holding office at the time this charter shall go into effect and shall have all the powers and duties thereof, except as in this charter otherwise provided. [*Amended, 1941*]

War Memorial

SECTION 44. The board of trustees of the San Francisco war memorial shall, under ordinance, have charge of the construction,

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The library commission shall appoint a librarian and a secretary who shall hold office at its pleasure. The librarian shall be the chief executive of the department and shall be the appointing officer for the department as provided in section 20 of the charter.

The library commission shall be the successors in officer of the board of library trustees holding office at the time this charter shall go into effect and shall have all the powers and duties thereof, except as in this charter otherwise provided.

Effective January 8, 1964, the library commission shall be reduced in number to seven members; and of the eleven members making up the commission immediately prior to said date, the last seven to have received appointment shall comprise the commission on said date. Notwithstanding any other provision of this section, the term of each of the remaining four members shall on that date automatically terminate. [*Amended, 1941; 1962*]

War Memorial

SECTION 44. The board of trustees of the San Francisco war memorial shall, under ordinance, have charge of the construction,

administration and operation of said war memorial and of the grounds set aside therefor. The board shall consist of eleven members appointed by the mayor, subject to confirmation by the board of supervisors. The terms of office of the incumbent trustees shall expire as heretofore classified by lot, as follows: The terms of four of said trustees shall expire on the 2nd day of January, 1933; three on the 2nd day of January, 1935; and four on the 2nd day of January, 1937. Thereafter appointments to said board shall be for the term of six years. Vacancies on said board shall be filled by the mayor, subject to confirmation by the board of supervisors, for the unexpired term becoming vacant. In making appointments to said board, the mayor shall give due consideration to veterans of all wars in which the United States may have engaged, and to such other classes of persons who may have a special interest in the purpose for which said war memorial is to be constructed and maintained. The members of said board shall serve without compensation.

The board shall have the power to appoint a secretary and a managing director, each of whom shall hold office at its pleasure, and such other employees as may be provided by the annual budget and appropriation ordinance.

The board of supervisors shall annually appropriate to the war memorial board an amount sufficient to defray the cost of maintaining, operating and caring for said memorial.

Art Commission

SECTION 45. An art commission for the city and county is hereby created, consisting of ten members appointed by the mayor and six ex officio members. The ex officio members shall be the mayor and the chairmen of the following boards and commissions: Public library, recreation and park, city planning, de Young Memorial Museum and California Palace of the Legion of Honor. The mayor shall appoint three lay members, and an artist-painter, an artist-sculptor, a musician, a litterateur, two architects and one landscape architect. In appointing the seven professional members, the mayor shall solicit nominations from architectural, art, musical, literary and other cultural organizations of the city.

The first appointments by the mayor shall be made not later than the 15th day of January, 1932, and shall be for the following terms, which shall expire at twelve o'clock noon on the 15th day of January in the respective years: One landscape architect and

one lay member, one-year terms; one artist-sculptor and one architect, two-year terms; one musician and one lay member, three-year terms; one litterateur and one architect, four-year terms; and one artist-painter and one lay member, five-year terms. Upon the expiration of the terms, all successive appointments shall be for a period of five years.

The members of the commission shall serve without compensation. No member of this commission shall receive from the city and county, or from any trust, donation, or legacy, any compensation for any service as an artist for the benefit of the city and county.

A quorum for the transaction of official business of the art commission shall consist of six members thereof. [*Amended, 1960*]

Powers and Duties

SECTION 46. No work of art shall be contracted for or placed or erected on property of the city and county or become the property of the city and county by purchase, gift or otherwise, except for any museum or art gallery, unless such work of art, or a design or model of the same as required by the commission, together with the proposed location of such work of art, shall first have been submitted to and approved by the commission. The term "work of art" as used in this charter shall comprise paintings, mural decorations, stained glass, statues, bas reliefs or other sculptures; monuments, fountains, arches or other structures of a permanent or temporary character intended for ornament or commemoration. No existing work of art in the possession of the city and county shall be removed, relocated or altered in any way without the approval of the commission, except as otherwise provided herein. The commission shall have similar powers with respect to the design of buildings, bridges, viaducts, elevated ways, approaches, gates, fences, lamps or other structures erected or to be erected upon land belonging to the city and county, and concerning arches, bridges, structures and approaches which are the property of any corporation or private individual and which shall extend over or upon any street, avenue, highway, park or public place belonging to the city and county. Said commission shall so act and its approval shall be required for every such structure which shall hereafter be erected or contracted for, and may advise in respect to lines, grades and platting of public ways and grounds.

Nothing herein contained shall be construed to limit or abridge the legal powers of the governing boards of the war memorial, the M. H. de Young Memorial Museum or the California Palace of the Legion of Honor.

The commission shall supervise and control the expenditure of all appropriations made by the board of supervisors for music and the advancement of art or music.

The commission shall exercise all reasonable supervision of policy connected with the arts as may hereafter be assigned to it by ordinance or executive action.

The commission shall decide upon any expenditure of less than one thousand dollars (\$1,000) within fifteen days after submission, and upon any other matter within thirty days after submission. If it fails so to do, its decision shall be considered unnecessary.

The commission may volunteer advice or suggestion to the owners of private property in relation to the beautification of the same; and any person contemplating to erect any building or make any improvement may submit the plans and designs or sketches thereof to the art commission for advice and suggestions, for which no charge shall be made by the art commission.

Control of Harbor by City and County

SECTION 47. Whenever the State of California shall grant, or by legislative action agree to grant, to the City and County of San Francisco all or a substantial part of the property now under the jurisdiction, possession, control and management of the board of state harbor commissioners, including the interest of the State of California in that portion of the bay of San Francisco now controlled by the board of state harbor commissioners and used as the harbor of San Francisco, the said city and county shall accept the same, and shall thereafter have authority to manage, govern, administer and control, all and singular, the property, rights and privileges granted, assigned or conveyed by the said State of California. Said city and county shall also have power, subject to the bond issue procedure provided for in this charter, or now or hereafter provided for by the laws of the State of California to assume an obligation or obligations to the State of California for the outstanding bonded indebtedness incurred by the State of California

for the acquisition, construction, improvement and development of the said harbor or of the properties used in connection therewith, or to issue new and additional bonds therefor; and any and all indebtedness assumed or bonds issued for said purpose shall not be included in the bonded debt limit provided for in section 104 of this charter, and if thereafter any additional bonded indebtedness is incurred to improve, construct, re-construct or extend said harbor, or to add thereto or to renew, construct or re-construct, operate or extend any service or equipment or utility used in connection with said harbor or in connection with the operation thereof, said bonded indebtedness so incurred shall also be exempt from the limitations contained in section 104 of this charter. All the powers and duties incident to the management, government, control and administration of the said harbor, and all properties and utilities used in connection therewith, shall be vested in the harbor commission of the City and County of San Francisco.

Said harbor commission of the City and County of San Francisco shall consist of five members to be appointed by the mayor, one of whom shall be a representative of the agricultural interests of the State of California and need not be a resident of the city and county. The term of office of each of said members shall be five years, provided that those first appointed to said commission shall so qualify themselves by lot that their terms of office shall expire respectively, one, two, three, four and five years after the 15th day of January next after their respective appointments. Vacancies on said board shall be filled by the mayor for the unexpired term. Each of said persons appointed to said commission shall give a bond in the sum of five thousand dollars (\$5,000) duly conditioned for the faithful performance of his duties and said persons so appointed shall be subject to recall, suspension, and removal in the same manner as an elective official. The compensation of each of the members of said harbor commission shall be twelve hundred dollars (\$1,200) per year. [*Amended, 1937*]

Powers and Duties of Harbor Commission

SECTION 48. The said harbor commission shall have possession, control and management of all and singular the properties and equipment granted to the City and County of San Francisco by the State of California for harbor purposes, as well as that portion of the bay of San Francisco now operated and controlled by the

board of state harbor commissioners for harbor purposes, and also all property and equipment hereafter acquired by the city and county for said purposes.

Said harbor commission shall have all of the powers and duties given to boards and commissions by section 19 of the charter, and in addition thereto shall have power:

(a) To regulate and control the anchoring, mooring, towing and docking of all vessels and water craft;

(b) To regulate and control the construction, maintenance, operation and use of, and to use and operate any and all railroads, wharves, warehouses, cold storage or refrigeration plants or other structures, improvements or appliances, used in connection with said harbor, or for the accommodation or promotion of commerce, navigation or fishing in or about said harbor;

(c) To regulate and control all dredging and excavation in or about said harbor;

(d) To fix, regulate and collect fees, rates, tolls or charges for the use or service of all wharves, warehouses, water craft, railroads or other facilities, structures or appliances owned, controlled or operated by said harbor commission, in connection with said harbor, or in connection with, or for the promotion or accommodation of commerce, navigation or fishing. All of said fees, rates, tolls and charges shall be sufficient to produce sufficient revenue to pay all expenses of every kind and nature incident to the operation and maintenance of said harbor and the properties and equipment used in connection therewith, together with the interest and sinking fund for any outstanding bonds issued by the State of California or by the City and County of San Francisco for the acquisition, construction or extension of said harbor, or of any of the properties or equipment used in connection therewith; provided that should the commission propose a schedule of rates, fees and charges or rentals for the respective services to be furnished by said commission which shall not provide such revenue, it may do so with the approval of the board of supervisors by a two-thirds vote thereof. Said harbor commission shall, from time to time, report to the board of supervisors a proposed schedule of fees, rates, tolls and charges to be made for the several classes of service to be rendered, and said fees, rates, tolls and charges shall be the legal fees, rates, tolls and charges to be paid to said harbor com-

mission for said services, unless the same are disapproved by a two-thirds vote of said board of supervisors, within thirty (30) days after said report is received. If said board of supervisors by a two-thirds vote rejects said schedule, it may return the same to the said harbor commission for revision;

(e) To enter into leases of lands, buildings, docks and piers, said leases to be approved by the board of supervisors before the same shall be effective; provided that the right to use any building, dock or pier for a period not to exceed one year shall not be deemed a lease under this section and the board shall have power to assign the use of any building, dock or pier for a period not exceeding one year at the regular tolls;

(f) To appoint a harbor master who shall be the chief executive of the harbor commission and who shall have the management of all of the affairs and activities placed under the jurisdiction of the said board. He shall devote his entire time to the duties of his office and his salary shall be fixed by the commission subject to the annual appropriation and salary ordinance. He shall hold his office at the pleasure of the commission and shall have the management of said harbor and of all of the facilities and equipment thereof and of all bureaus and departments established for the operation of said harbor or for the operation of any equipment or facility thereof. Subject to the approval of the commission he shall appoint and remove any and all heads of departments or bureaus, who may not be subject to the civil service provisions of the charter. He shall possess the necessary administrative, executive and technical qualifications necessary to enable him to perform the duties of his office. His compensation shall not exceed prevailing salaries paid those holding similar positions in comparable private employment. The commission may confer on him such additional powers and authority as it may see fit;

(g) To establish such departments and bureaus as may be necessary or convenient for the conduct of its affairs;

(h) To enter into such agreements, subject to the approval of the board of supervisors with the State of California, the board of state harbor commissioners, or any other state agency or department that may be necessary to obtain and receive, take or hold any properties, privileges or things granted to the city and county by the state;

(i) To institute, defend or prosecute, in the name of the City and County of San Francisco, any and all actions or legal proceedings necessary or proper to acquire, hold or defend the possession of any property granted to the said city and county, or held by said city and county, for harbor purposes, and to institute and prosecute any and all actions or legal proceedings necessary or proper to prevent the obstruction or illegal use or occupation of any of the properties, things or facilities held by the city and county for the purposes of said harbor. The city attorney shall be the legal adviser of the commission, and may, with the approval of the commission compromise, settle or dismiss any litigation or legal proceeding pending for, or on behalf of the commission, relative to any matter under its jurisdiction, provided that if such action or proceeding involves the title or right of possession of any real property owned by the city and county, such action shall not be compromised, settled or dismissed without the concurrence of the board of supervisors. The city attorney shall, at the request of the commission detail the necessary attorneys to perform the legal work of the commission, and said commission may, with the consent of the mayor and the approval of the city attorney, appoint special counsel for temporary purposes. The compensation of all attorneys serving the commission shall be paid from the revenues of the harbor, unless otherwise provided in the salary and appropriation ordinance.

The board of supervisors may confer upon said harbor commission such other and additional powers as it shall deem proper and which are not in conflict with this section. [*Amended, 1937*]

Employees of Harbor Commission

SECTION 48.1. All persons actually employed in the operating service of the board of state harbor commissioners at the time the City and County of San Francisco shall take over and assume the management and control of the said harbor and the properties used in connection therewith, and who at said date shall be entitled to benefits of the civil service provisions of the State of California, in so far as the same may be applicable to the employees of the board of state harbor commissioners, shall be continued in their respective positions and shall continue to hold their said positions pursuant to the civil service provisions of this charter, and shall be entitled to all of the rights, benefits and privileges which said

persons might have, or might have had, had said persons been originally appointed to their respective positions under **certification** from the civil service commission of the City and County of San Francisco; and in the matter of seniority, in service of said employees entitled to the benefits of said civil service provisions, as herein provided, the seniority of each employee shall be reckoned from his first permanent appointment to employment **under** said board of state harbor commissioners, and as to their respective positions, said employees shall have preference over all other employees of the city and county.

All employees of the board of state harbor commissioners at the time this act shall go into effect shall continue to be members of the state employees' retirement system, with all the rights, privileges and benefits of said system until the time of the actual transfer to the City and County of San Francisco of the properties now under the jurisdiction of said board of state harbor commissioners; and upon the acceptance of said transfer by the City and County of San Francisco, said employees shall become members of the San Francisco city and county retirement system and shall be entitled to all the benefits and privileges and subject to the obligations of said system and the retirement board of the San Francisco City and County Employees' Retirement System shall make such allowance and provision for the prior service of said employees rendered to the board of state harbor commissioners as may be recommended by said retirement board and approved by ordinance of the board of supervisors.

All employees whose respective employments are transferred from the board of state harbor commissioners to the harbor commission of the City and County of San Francisco, pursuant to the provisions of this section or pursuant to the provisions of any act of the Legislature of the State of California transferring the properties now under the jurisdiction of the board of state harbor commissioners to the City and County of San Francisco, and who, at the date of the actual transfer of said properties, reside outside of the City and County of San Francisco, shall not be subject to the residential qualifications of officers and employees of the city and county provided for in section 7 of this charter.

In the matter of the control and operation of the harbor and of the facilities and equipment thereof, including the matter of budgets and appropriations, the harbor commission shall be sub-

ject to the budgetary and fiscal procedure elsewhere provided for in this charter.

Full power and authority is hereby vested in the board of supervisors of the City and County of San Francisco to enter into such supplemental agreements with the State of California, or with the board of state harbor commissioners, or with any other agency of the State of California, not in conflict with the provisions of this charter, in order to meet any condition provided for by the Legislature of the State of California in the transfer to the City and County of San Francisco of said properties now under the jurisdiction of the board of state harbor commissioners, and any agreement so entered into will be as binding upon the City and County of San Francisco as if the provisions of said agreement were embodied in this charter.

The revenues of said harbor, and of all the properties incident thereto, or used in connection therewith, shall be deposited in a separate fund in the treasury of the city and county, and shall be used for the following purposes, and in the order herein named:

(a) For the payment of operating expenses, including pension charges.

(b) For the payment of the principal and interest of any obligations of the State of California and assumed or agreed to be paid by the City and County of San Francisco;

(c) For repairs and maintenance of the properties of said harbor or used in connection with the operation thereof;

(d) For the payment of the principal and interest on any bonds issued by the City and County of San Francisco for the acquisition, construction, repair or extension of said harbor, or of any of the facilities used in connection therewith;

(e) An amount which shall be sufficient to meet the cost of reconstruction and replacement made necessary by the physical and functional depreciation of any of the properties or equipment of said harbor, as the same shall occur;

(f) To pay for extensions and betterments to said harbor or to the equipment and facilities thereof;

(g) To establish a surplus or sinking fund for the improvement or extension of the harbor or for any facility used in connection therewith. [*New section, 1937*]

Appointments and Nominations By Mayor

SECTION 49. The mayor shall nominate members of the board of education for confirmation by the voters, and shall appoint two members of the retirement board, and shall also appoint members of the public utilities, city planning and civil service commissions, each of which said boards or commissions to have the membership, terms of members, and powers and duties as are provided in this charter.

OTHER BOARDS AND DEPARTMENTS

California Palace of the Legion of Honor

SECTION 50. The California Palace of the Legion of Honor shall be known as such in perpetuity. The management, superintendence and operation thereof and the lands set aside therefor shall be vested in a board of eleven trustees, of which the mayor and the president of the recreation and park commission shall be ex officio members. All vacancies occurring in said board shall be filled by the vote of a majority of the remaining members thereof. The number of trustees may be increased from time to time as needed, provided that at no time shall the total number of trustees exceed seventeen. The trustees in office at the time, shall, in their discretion, determine the need for additional trustees. Upon making such determination, the additional trustees shall be elected by the majority of the board then in office. None of said trustees shall receive any compensation for his or her services. Trustees need not be residents of the city and county.

The board shall have exclusive charge of the said memorial, the lands set aside therefor, and its affairs, and of all real and personal property thereunto belonging, or which may be acquired by loan, purchase, gift, devise, bequest or otherwise, when not inconsistent with the terms and conditions of the loan, gift, devise or bequest. It shall meet for its purposes at least once in three months, and at such other times as the president or any three members thereof may appoint, in a place to be provided for the purpose. It shall appoint a director, curators and secretary, who shall hold office at its pleasure. It shall appoint such other assistants and employees as may be necessary, who shall be subject to the civil service and salary standardization provisions of this charter; provided that all such assistants and employees who were actually employed, or who were on military leave of absence from employment on January 11, 1943 and who had been continuously employed for one year immediately preceding such date or such military leave of absence shall be continued in their respective positions as if appointed thereto after examination and certification from a civil service list of eligibles and thereafter shall be governed by and subject to the civil service provisions of this charter. The secretary shall keep a full account of all property,

money, receipts and expenditures, and a record of all its proceedings, and shall file annually a report with the controller. The trustees shall have power to insure loan exhibits against any risk.

The supervisors, for the purpose of maintaining, operating and superintending said memorial, and the purchase of objects of art, literary productions and other personal property, shall provide an amount sufficient for the maintenance, operation, and superintendence thereof; subject to the budget and fiscal provisions of this charter, and to that end shall levy a tax annually, the proceeds of which shall be credited to and deposited in a fund in the treasury of the city and county to be known as the "California Palace of the Legion of Honor Fund," and shall be used exclusively for the purposes thereof.

It is the intention that the administration and control of the California Palace of the Legion of Honor shall be continued with the powers granted and under the conditions imposed by the terms of the donation and accepted by the city and county. [*Amended, 1943; 1952*]

M. H. de Young Memorial Museum

SECTION 51. The M. H. de Young Memorial Museum shall be known as such in perpetuity. The museum and the grounds set aside therefor shall be under the management, superintendence, and operation of a board consisting of eleven trustees, of which the mayor and the president of the park commission shall be ex officio members. All vacancies occurring in said board shall be filled by the vote of a majority of the remaining members thereof. The number of trustees may be increased from time to time as needed, provided that at no time shall the total number of trustees exceed seventeen. The trustees in office at the time, shall, in their discretion, determine the need for additional trustees. Upon making such determination, the additional trustees shall be elected by the vote of the majority of the board then in office. None of said trustees shall receive any compensation for his or her services.

The board shall have exclusive charge of the said memorial museum, the lands set aside therefor, and its affairs, and of all real and personal property thereunder belonging, or which may be acquired by loan, purchase, gift, devise, bequest, or otherwise, when not inconsistent with the terms and conditions of the loan, gift, devise, or bequest. The trustees shall have power to insure

loan exhibits against any risk. The park commission shall maintain and care for the grounds of this memorial museum, and shall furnish the moneys for the necessary repair and embellishment of the grounds and unoccupied parts.

The board of trustees shall have the power to maintain, repair or reconstruct existing buildings and construct new buildings and to make and enter into contracts relating thereto, subject, however, to the budget and annual appropriation ordinance. The supervisors, subject to the budget provisions of this charter, shall, for the purpose of maintaining said memorial museum, include in each annual budget of city and county expenditures an amount sufficient for the maintenance, operation and superintendence thereof, not less than forty thousand dollars (\$40,000) in each annual budget, and such additional amount as is necessary to take care of the increased demand for help, buildings, repairs, and care of said memorial museum. Such amount shall be credited to and deposited in the fund in the treasury of the city and county to be known as the "M. H. de Young Memorial Museum Fund." The board shall meet for its purposes at least once in three months, and at such other times as the president or any three members thereof may appoint, in a place to be provided for the purpose. It shall appoint a director, curators and a secretary who shall hold office at its pleasure. It shall appoint such other assistants and employees as may be necessary, who shall be subject to the civil service and salary standardization provisions of this charter; provided that all such assistants and employees who are actually employed, or who may be on military leave of absence from employment on the effective date of this amendment and who have been continuously employed for one year immediately preceding such date of such military leave of absence shall be continued in their respective positions as if appointed thereto after examination and certification from a civil service list of eligibles and thereafter shall be governed by and subject to the civil service provisions of this charter. The secretary shall keep a full account of all property, money, receipts and expenditures and a record of all its proceedings, and shall file annually a report with the controller.

It is the intention that the administration and control of the M. H. de Young Memorial Museum shall be continued with the powers granted and under the conditions imposed by the terms of

the donations and accepted by the city and county. [*Amended, 1943; 1948*]

California Academy of Sciences

SECTION 52. The management, superintendence, and operation of all buildings and other improvements heretofore or hereafter erected by or under the authority of the California Academy of Sciences, a non-profit corporation organized under the laws of the State of California for the promotion of science, on any property owned or controlled by the park commission of the City and County of San Francisco, shall be in charge and under the direction of said California Academy of Sciences. The buildings and improvements hereby referred to include, without limitation, the Steinhart Aquarium, the original Natural History Museum and the Simson African Hall, located in Golden Gate Park and heretofore erected by or under the authority of the California Academy of Sciences, together with the proposed additions thereto for the purpose of housing, among other things, the proposed Alexander F. Morrison Planetarium, and a proposed auditorium, if and when erected by said California Academy of Sciences.

In addition to all other approvals required by law, plans for all proposed buildings and improvements, including any additions, must be approved by the park commission and the art commission. The park commission, notwithstanding any provisions of the charter to the contrary, is hereby authorized, subject to approval by the board of supervisors by ordinance, to set apart from time to time such portions of property under its control, as may be required for such buildings and improvements, sufficient grounds being allotted to secure the safety of the same from fire. The erection of buildings or additions to buildings shall not be started by the California Academy of Sciences until it shall have submitted a statement satisfactory to the park commission of its ability to finance the proposed work to completion. All buildings and improvements heretofore or hereafter erected by or under the authority of said California Academy of Sciences in or on property owned or controlled by the City and County of San Francisco are and shall become the property of the City and County of San Francisco, but said buildings and improvements and all persons employed therein or thereabout shall be used and controlled exclusively by the said California Academy of Sciences under such

proper rules and regulations as it may prescribe, subject, however, to the charter provisions relating to civil service and salary standardization with respect to employees of the city and county. The board of supervisors shall, by ordinance, prescribe the insurance to be furnished by the California Academy of Sciences to save the city and county harmless from claims for damages to persons or property arising from the construction or use of any of said buildings. No fees shall be charged for admission to said buildings or improvements, except that reasonable and appropriate charges may be made by said California Academy of Sciences for admission to or use of the said proposed Alexander F. Morrison Planetarium and proposed auditorium. Particular buildings or improvements or portions thereof may be named in memory of persons designated by said California Academy of Sciences.

Not later than the first day of April in each year the California Academy of Sciences shall file with the mayor and the board of supervisors a statement for the last fiscal year of its expenses and income in connection with the use and operation of each of the buildings included herein.

Funds necessary for the maintenance, operation, and continuance of said Steinhart Aquarium shall be furnished by the city and county to said California Academy of Sciences. The board of supervisors is empowered to furnish to said California Academy of Sciences such funds as the board shall deem proper for the maintenance, operation, and continuance of any or all other of said buildings and improvements heretofore or hereafter erected. Such funds shall be appropriated in accordance with the budget and fiscal provisions of this charter.

All positions in said buildings and improvements for which funds shall be furnished by the city and county, as aforesaid, shall be held by employees of the city and county, with the exception of the director, the secretary of the board of trustees of said California Academy of Sciences, the curators and other scientific and professional personnel, and occupants of part-time positions for which a total compensation of less than \$80.00 per month is provided by the city and county, inclusive of allowance for maintenance and other incidental benefits. Any occupant of a position or employee on military leave from a position in any of said buildings or improvements, which position is not within the exceptions hereinabove, or was not heretofore subject to the civil service pro-

visions of the charter, who shall on the effective date of this amendment, be a citizen of the United States, and have been employed in such position for one year immediately prior to said effective date, shall be continued in such position by said city and county on said date, in accordance with the civil service classification of positions as if appointed thereto after examination and certification from a list of eligibles, and shall be governed thereafter by the civil service provisions of the charter. Each such occupant or employee so employed and each such person on military leave shall, for purposes of civil service seniority be deemed to have been appointed to such position by the city and county upon the date of commencement of his occupancy thereof; provided that if such date is prior to January 16, 1945, the date of commencement of such occupancy shall for purposes of civil service seniority be deemed to be January 16, 1945. Positions held by employees of the city and county at said buildings and improvements shall be subject to the civil service provisions of this charter and the compensation thereof shall be subject to the salary standardization provisions of this charter, in like manner and extent in all respects as positions and compensations of employments in the city and county service generally, notwithstanding anything to the contrary contained in the charter or ordinances of said city and county. The chief administrative officer shall be the appointing officer as provided in this charter.

Nothing herein contained shall abrogate any trust under and by which any property of said California Academy of Sciences has been or shall hereafter be accepted by the city and county or under and by which it is now or shall hereafter be held. [*Amended, 1945; 1946; 1948*]

JUDICIAL DEPARTMENTS

Municipal Court

SECTION 53. The powers and duties of the municipal court of the city and county shall be as established by the constitution and general law, and said municipal court shall be as constituted and regulated by this charter, except as otherwise provided by general law. The compensation of said judges shall be in full for all services, and any fees required to be collected by law by the municipal court or the clerk thereof shall be paid into the treasury of the city and county. No judge of the municipal court shall practice law in or out of court during his continuance in office.

The presiding judge shall supervise and direct the work of the clerk of the municipal court, and shall be responsible for the proper keeping of records and making of reports by the clerk. [*Amended, 1949. See Sec. 11, Art. VI of the Constitution*]

Municipal Court Regulations and Reports

SECTION 54. The judges of the municipal court shall meet at least once in each month, and at such other times as the presiding judge may require, and shall prescribe rules and regulations not inconsistent with general laws as are necessary and proper for the advancement of justice and prevention of delay in the business of the court.

Not later than the tenth day of each month, the presiding judge, through the clerk of the municipal court, shall file with the board of supervisors a consolidated report of the business of the court and the judges thereof for the preceding month. Copies of such reports shall be filed with the city attorney, the district attorney, the chief of police and the clerk of the municipal court. In January of each year, the presiding judge, through the clerk, shall file a similar report covering the preceding calendar year. The board of supervisors may cause copies of such annual reports to be printed for free distribution to citizens who request them.

Clerk of the Municipal Court

SECTION 55. The clerk of the municipal court shall be appointed by the judges of the court, and shall hold office at their

pleasure. The clerk shall appoint, subject to the civil service provisions of this charter, such clerks, stenographers, interpreters and other personnel as may be authorized by appropriation ordinances of the board of supervisors; provided, however, that the sheriff shall, on the order of the court, detail necessary bailiffs to the civil departments thereof, and shall execute the orders and processes issued by the court. The salaries of the clerk and the personnel of the clerk's office shall be fixed by the board of supervisors, as provided by this charter for other city and county employees. The clerk shall have charge, superintendence and control of said office and the personnel thereof, and be responsible for records and reports incidental to the business of the court. He shall have the powers and duties prescribed by general law not inconsistent with this charter.

The power to fix the salaries of attaches of the municipal court is in the legislature by virtue of Const. Art. VI, § 11, and where it has acted, as in Stats. 1947, ch. 1113, its action supersedes a salary ordinance on the subject. *Slavich v. Walsh* (1947) 82 Cal. App. (2d) 228, 186 Pac. (2d) 35.

The delegation to the board of supervisors of the power to fix salaries of some municipal court attaches, as in Municipal Court Act, § 6 (Deering's Gen. Law, Act 5238) from 1929 to 1947, is not irrevocable, and when the power is withdrawn, and the salaries are fixed by statute, as by Stats. 1947, ch. 1113, the statute is supreme. *Slavich v. Walsh* (1947) 82 Cal. App. (2d) 228, 186 Pac. (2d) 35.

Superior Court Appointments

SECTION 56. The powers and duties of the superior court are prescribed by state law. The board of supervisors shall provide for the maintenance of the superior court in accordance with the fiscal provisions of this charter. [*Amended, 1949. See Sec. 204e, Code of Civil Procedure*]

The San Francisco Law Library

SECTION 57. The San Francisco Law Library, established under an act of the Legislature approved March 9, 1870, shall be under the management and control of the board of trustees, which shall consist of seven appointive members of the San Francisco bar, and the mayor, the presiding judge and the three judges of the appellate department of the superior court, ex officio. The board of trustees holding office at the time this charter shall go into effect shall continue as the board of trustees of said library. All vacancies on said board shall be filled by said board.

The board of trustees shall appoint and at its pleasure may remove a librarian, who shall be its executive officer, and such assistants as are necessary for the proper conduct and operation of the library. The salaries of the librarian and the assistants and employees shall be fixed by the board of supervisors as provided by this charter for other city and county employees.

The supervisors shall provide suitable and sufficient quarters for the law library, fit up and furnish the same and provide for the supply of necessary light, heat, stationery and other conveniences. The library shall be so located as to be readily accessible to the judges and the officers of the court.

The county clerk and the clerk of the municipal court shall collect the fees provided for law libraries by general law and the fees so collected by such officers or by any officers under any other provisions of the law shall be paid to the treasurer of the law library monthly, and shall constitute a law library fund to be expended by the law library trustees in the purchase of books and periodicals, and in the establishment and maintenance of the law library.

The judiciary, city, county and state officials, members of the bar and all inhabitants of the City and County of San Francisco shall have free access, use and enjoyment of the law library, subject to rules and regulations of the board of trustees.

Probation Boards

SECTION 58. The adult probation committee and the juvenile probation board or committee shall continue to exercise their respective powers and duties as fixed by state laws, except as in this charter otherwise provided.

The superior court judges of the city and county presiding in the department or departments for the hearing and disposition of criminal cases and proceedings shall, by order entered in the minutes of the court in the criminal department or departments thereof, appoint the adult probation officer.

The judge of the superior court of the city and county who has been, or who hereafter may be, designated the judge of the juvenile court, shall, by order entered in the minutes of the court, appoint the probation officer of the juvenile court.

The adult probation officer shall appoint such assistants, deputies and employees as may be allowed or provided by the board of supervisors, subject to confirmation by the adult probation board or committee created by state law.

The probation officer of the juvenile court shall appoint such assistants, deputies and employees as may be allowed or provided by the board of supervisors, subject to confirmation by the juvenile probation board or committee created by state law.

The salaries of the adult probation officer, the probation officer of the juvenile court, their assistants, deputies and employees shall be fixed by the board of supervisors in the same manner as for other officials and employees of the city and county.

The adult probation officer, the probation officer of the juvenile court and their assistants and deputies shall have the powers conferred upon adult probation officers, probation officers of the juvenile court, their assistants and deputies, by the laws of the State of California; and they shall perform all of the duties prescribed by such laws, and such additional duties as may be prescribed by ordinances of the board of supervisors.

The civil service provisions of this charter shall apply to and govern the assistants, deputies and employees of the adult probation officer and the probation officer of the juvenile court. For purposes of this charter the adult probation officer shall be the appointing officer as to his assistants, deputies and employees, subject to confirmation as aforesaid; and the said probation officer of the juvenile court shall be the appointing officer as to his assistants, deputies, and employees, subject to confirmation as aforesaid.

Any person who has served as an assistant, deputy or employee of such adult probation officer or probation officer of the juvenile court, or in the probation department of the city and county for a continuous period of one year immediately prior to the time this charter shall go into effect, and who shall be actually serving as such assistant, deputy, or employee at that time, is hereby declared to be appointed within the civil service provisions of this charter to the office or position in which he may then be serving; and shall be entitled to all the benefits of this charter thereafter.

The pension and retirement provisions of this charter shall apply to and govern the adult probation officer, the probation officer of the juvenile court, their assistants, deputies and employees.

CHIEF ADMINISTRATIVE OFFICER

SECTION 59. The mayor shall appoint a qualified person as chief administrative officer, subject to confirmation and approval by the board of supervisors. The appointee shall have been a resident of the State of California for at least five years immediately preceding his appointment. The requisite qualifications of such appointee shall be administrative and executive ability and experience for the position to be filled.

He shall be subject to suspension and removal in the same manner as elective officers. He shall also be subject to removal by a vote of not less than two-thirds of the board of supervisors, on the basis of written charges, and, if he so request, only after a public hearing on such charges before the board of supervisors not less than five days nor more than fifteen days after the filing thereof, and prior to the date on which the supervisors shall vote on the question of his removal, but on the filing of written charges, and pending and during such hearing, the supervisors, by majority vote, may suspend him from office. The written charges and any reply thereto by the chief administrative officer shall be entered at length in the journal of the board of supervisors. The action of the board of supervisors in removing the chief administrative officer shall be final. [*Amended, 1962*]

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **Rand v. Collins** (1931) 214 Cal. 168, 4 Pac. (2d) 529.

Placing the chief administrative officer in a separate class for the purpose of exclusion from the retirement system and reemployment was justified by the fact that the position is unique, different, and distinguished from all other positions in the city and county government. **Acton, Heil, Brooks, v. Henderson** (Three cases) (1957) 150 Cal. App. (2d) 1, 309 Pac. (2d) 481.

Powers and Duties of Chief Administrative Officer

SECTION 60. The chief administrative officer shall be responsible to the mayor and to the board of supervisors for the administration of all affairs of the city and county that are placed in his charge by the provisions of this charter and by ordinance, and to that end he shall have power and it shall be his duty to exercise supervision and control over all administrative departments which are under his jurisdiction; to appoint the heads of departments under his control and the members of advisory and

other boards provided by this charter or by ordinance to be appointed by the chief administrative officer; to prescribe general rules and regulations for the administrative service under his control; to have a voice but no vote in the board of supervisors, with the right to report on or to discuss any matter before the said board concerning the affairs of the departments in his charge; to make such recommendations and propose such measures to the mayor, the board of supervisors, or committees thereof, concerning the affairs of the city and county in his charge as he may deem necessary; to coordinate the functioning of the several departments of the city and county charged with powers and duties relating to control of traffic; and to provide for the budgeting and control of publicity and advertising expenditures of the city and county.

The chief administrative officer may designate an officer or an employee in any department under his jurisdiction to exercise the powers and perform the duties of any county office not specifically designated by this charter.

The chief administrative officer may designate the recorder to exercise the powers and perform the duties of the registrar of voters and to occupy the offices of registrar of voters and recorder, receiving a single salary therefor to be fixed in accordance with the salary standardization provisions of this charter. [*Amended, 1948*]

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **Rand v. Collins** (1931) 214 Cal. 168, 4 Pac. (2d) 529.

Administrative Departments Under Chief Administrative Officer

SECTION 61. From and after twelve o'clock noon on the 8th day of January, 1932, the functions, activities and affairs of the city and county that are hereby placed under the direction of the chief administrative officer by the provisions of this charter, and the powers and duties of officers and employees charged with specific jurisdiction thereof, shall, subject to the provisions of section 2 and section 20 of this charter, be allocated by the chief administrative officer, among the following departments:

Department of Finance and Records, which shall include the functions and personnel of the offices of tax collector, registrar of

office at his pleasure. The public administrator shall appoint and at his pleasure may remove an attorney who shall be paid an annual salary of eight thousand dollars (\$8,000). He may also appoint such assistant attorneys as may be provided by the budget and annual appropriation ordinance.

Purchasing Department, which shall include the functions and personnel of the bureau of supplies, the operation of central stores and warehouses, and the operation of central garages and shops, and shall be administered by the purchaser of supplies who shall be appointed by the chief administrative officer and shall hold office at his pleasure.

Real Estate Department, which shall include the functions and personnel of the office of the right-of-way agent as established in the bureau of engineering at the time this charter shall go into effect, and also the control, management and leasing of the exposition auditorium.

Department of Public Works, which shall include the functions and personnel of the department of public works, as established at the time this charter shall go into effect, with the exception of functions and personnel which are established by this charter under the management, direction and control of the public utilities commission, and which department shall also include the functions and personnel of the telephone exchange. This department shall be administered by the director of public works, who shall be appointed by the chief administrative officer and shall hold office at his pleasure.

Department of Electricity, which shall include the functions and personnel of the department of electricity as established at the time this charter shall go into effect. The department shall be administered by a chief of department who shall, from and after twelve o'clock noon on the 8th day of January, 1932, have the powers and duties of the joint board of fire and police commissioners composing the joint commission in charge of the department of electricity, at which time the joint commission shall be abolished.

The premises of any person, firm or corporation may, for the

purpose of police or fire protection, be connected with the police or fire signal or telephone system of the city and county upon paying a fair compensation for such connection and the use of the same, provided that any such connection shall require the approval of the chief of the department of electricity and shall not in any way overload or interfere with the proper and efficient operation of the circuit to which it is connected. The conditions upon which such connection shall be made and the compensation to be paid therefor shall be fixed by the board of supervisors by ordinance upon the recommendation of the chief of the department.

Department of Public Health, which shall include the functions, institutions and personnel of the department of public health as existing at the time this charter shall go into effect. Said department shall be administered by a director of health, who shall be a regularly licensed physician or surgeon in the State of California, with not less than ten years' practice in his profession immediately preceding his appointment thereto. He shall be appointed by the chief administrative officer and shall hold office at his pleasure, provided that the incumbent health officer at the time this charter shall go into effect shall be deemed appointed to such office. The director of public health shall have and continue the powers and duties of the health officer and the board of health, from and after twelve o'clock noon on the 8th day of January, 1932, at which time the terms of members of said board shall terminate, and such board as theretofore existing shall be abolished.

Health Advisory Board. There is hereby created a health advisory board of seven members, three of whom shall be physicians and one a dentist, all regularly certificated. Members of the board shall serve without compensation. They shall be appointed by the chief administrative officer for terms of four years; provided, however, that those first appointed shall classify themselves by lot so that the terms of one physician and one lay member shall expire in 1933, 1934 and 1935, respectively, and the term of one member in 1936.

Such board shall consider and report on problems and matters under the jurisdiction of the department of public health and

shall consult, advise with and make recommendations to the director of health relative to the functions and affairs of the department. The recommendations of such board shall be made in writing to the director of health and to the chief administrative officer.

Coroner's Office, which shall include the functions and personnel of the existing office of coroner as established at the time this charter shall go into effect.

County Agricultural Department, which shall be administered by a county agricultural commissioner and shall include functions established by state law and those assigned to it by or in accordance with provisions of this charter.

Department of Weights and Measures, which shall include the functions and personnel of the office of sealer of weights and measures as established at the time this charter shall go into effect.
[*Amended, 1949*]

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **Rand v. Collins** (1931) 214 Cal. 168, 4 Pac. (2d) 529.

PUBLIC WELFARE DEPARTMENT

SECTION 61.1. Subdivision 1. There is hereby established a public welfare department. This department shall consist of a welfare commission of five members, a director of public welfare, and such employees and assistants as may be necessary to carry out the work and functions of said department.

Subdivision 2. The members of the welfare commission shall be appointed thereto by the mayor and shall be selected for their respective positions on the basis of their interest in and understanding of the problems of public welfare. The members of said commission shall serve without compensation and no person shall be eligible to serve on said commission while holding a salaried public office, position or employment.

Subdivision 3. The term of office of the members of the said commission, subject to the provisions hereof relative to removal and the terms of the first members of the commission, shall be four years. Within thirty days after this amendment shall become effective the mayor shall appoint five members to said welfare commission, one member to be appointed for a term to expire on the 15th day of January, 1938; one for a term to expire on the 15th day of January, 1939; one for a term to expire on the 15th day of January, 1940, and two for terms to expire on the 15th day of January, 1941; and upon the expiration of the terms of each of said members of said commission so appointed the mayor shall fill the vacancy arising by reason of the expiration of said term by the appointment of a member to said commission for a term of four years. Vacancies occurring in the membership of said commission shall be filled by an appointment to be made by the mayor for the unexpired term of said person in whose place said appointment is made; and when the term of any member of said commission shall expire, then said appointment shall be made for the full period of four years from the date of the expiration of the term. All vacancies shall be filled within thirty days of the occurrence thereof.

Subdivision 4. Members of the commission shall be subject to removal from office by the mayor for cause, but only upon written charges made and signed by the mayor, copy of said charges to be served upon the offending commissioner; and said charges shall be

§ 61.1

heard by the mayor and on said hearing of said charges the said commissioner so charged shall have the opportunity to appear and to be heard.

Subdivision 5. The commission shall be a policy-determining and supervisory body and shall have all the powers provided for in section 19 of the charter.

Subdivision 6. The commission shall appoint and, subject to the budgetary provisions of this charter, fix the salary of a director of public welfare who shall serve at the pleasure of said commission and shall not be subject to the civil service provisions of the charter. Said director shall possess qualifications and experience essential to the conduct of a complete program of public welfare. Said director shall be the chief executive of the department and shall have all the powers provided for chief executives as set forth in section 20 of the charter. He shall be responsible for the enforcement of the rules and regulations of the commission and, upon the recommendation of the commission, shall have the power to establish such divisions and bureaus as may be necessary for the administration of relief and welfare in the City and County of San Francisco.

Subdivision 7. All employees in the public welfare department, with the exception of the director thereof, shall be subject to the civil service provisions of the charter and, subject to said provisions, the director of public welfare may employ such employees as may be necessary for the carrying out of the work and functions of the department. The functions and duties of the county welfare department as established and existing at the time this amendment shall go into effect shall be transferred and shall be included in the public welfare department and the personnel of said county welfare department shall be so transferred and shall hold their respective positions under the same conditions and upon the same tenure as the same were held in the county welfare department. The functions of the Citizens' Emergency Relief Committee appointed pursuant to Ordinance No. 19.07120 shall be transferred to said public welfare department.

In all cases where there are no civil service lists available from which any position existing under the Citizens' Emergency Relief Committee, at the effective date of this amendment, can be filled, examinations shall be held by the civil service commission within

six months after said date to establish a list or lists of eligibles to fill said positions. Any person who has served under the general supervision of the Citizens' Emergency Relief Committee for a period of one year continuously next prior to the effective date of this amendment and who shall actually be employed under the supervision of said Citizens' Emergency Relief Committee on said date shall, upon obtaining a passing mark on any examination held by said civil service commission for his position, be allowed an additional credit of five per cent (5%) in making up the list of eligibles secured by such examination. The civil service commission shall be allowed a period of six months from the effective date of this amendment within which to classify or reclassify, or hold examinations for eligible lists for the positions now existing under said Citizens' Emergency Relief Committee, and pending the classification of said positions and the holding of examinations therefor, where the same is necessary, the incumbents in said positions shall be entitled to continue in their positions and receive the compensation provided by law for their services.

Subdivision 8. Said public welfare department shall exercise all of the functions exercised by the county welfare department and by the Citizens' Emergency Relief Committee as the same exist at the time this amendment is approved by the Legislature of the State of California and shall perform such other duties and have such other functions as may be authorized by the board of supervisors of the City and County of San Francisco or required by the government of the United States or the State of California or any department or agency thereof. [*New section, 1937*]

DEPARTMENT AND BUREAU HEADS—CONTINUED

Certain Officers Made Subject To Civil Service Provision of Charter

SECTION 62. Offices heretofore elective which are, by the provisions of this charter, made appointive, shall come within the civil service provisions of this charter and any incumbent in any such office at the time this charter became effective on January 8, 1932, shall, if he has held such office for one year continuously prior thereto, be deemed appointed to such position, at his then existing salary, under the civil service provisions of this charter, and thereafter shall hold office under such provisions; provided that such salaries so continued shall apply only to such incumbents as long as they legally hold such positions and, on the appointment of a successor to any such incumbent, the salary of such position shall be subject to the salary standardization provisions of this charter.

Other positions as heads of departments, bureaus, offices or institutions which have heretofore been exempt from charter civil service provisions, are hereby declared to be subject to the civil service provisions of this charter unless specifically exempted, and any incumbent in any such position at the time this charter became effective on January 8, 1932, shall, if he has held office for one year continuously prior thereto, be deemed appointed to such position under the civil service provisions of this charter and thereafter shall hold office under such provisions. [*Amended, 1946*]

Cited in **Rand v. Collins** (1931) 214 Cal. 168, 4 Pac. (2d) 529.

CONTROLLER

Controller—Appointment and Removal

SECTION 63. There shall be a controller, who shall be appointed by the mayor, subject to confirmation and approval by the board of supervisors. Such appointment shall be made solely on the basis of qualifications by training and experience for the position to be filled. He may be removed by the supervisors by a two-thirds vote. He shall receive an annual salary of ten thousand dollars (\$10,000). [*Salary of controller now subject to Section 151.1.*]

The incumbent in the office of auditor on the 7th day of January, 1932, provided he has held such office for one year continuously prior thereto, shall be deemed appointed at his existing salary under the civil service provisions of this charter, to the position of county accountant, which position is hereby created.

General Powers and Duties of Controller

SECTION 64. The controller shall be the successor of the auditor, and shall have the powers and duties of a county auditor, except as in this charter otherwise provided. He shall be the auditor and chief accounting officer of the city and county, and shall exercise general supervision over the accounts of all officers, commissions, boards and employees of the city and county charged in any manner with the receipt, collection or disbursement of city and county funds or of other funds, in their capacity as city and county officials or employees. He shall have the power and duty of prescribing the method of installing, keeping and rendering accounts of, and the financial reports to be rendered by, the several officers, boards and employees of the city.

The controller shall keep accounts showing the financial transactions of all departments, offices and other subdivisions of the city and county. Such accounts and the accounting procedure shall be adequate to record (a) all budgeted revenues and appropriations, together with additions or transfers thereto, and to show at all times the amount of encumbrances, expenditures or transfers therefrom, and the balances therein; (b) all revenues accrued and liabilities incurred; (c) all cash receipts and disbursements; and (d), in general, all transactions affecting the acquisition, custody or disposition of values.

Subject to the provisions of this section, the public utilities commission shall maintain separate accounts for each utility in such manner as to exhibit exact and complete financial results of ownership, management and operation; the actual cost of each utility; all costs of maintenance, extension and improvement; all operating expenses of every description; the general expenses of the commission and bureaus thereof apportioned to each such utility; the amount paid or set aside for depreciation, insurance, interest and sinking fund; and estimates of the amount of taxes that would be chargeable against such property and the revenue thereof if privately owned and operated. All accounts shall be maintained in accordance with forms and requirements of the state railroad commission for public utilities engaged in like character of service, in so far as these shall be applicable to publicly owned and operated utilities.

It shall be the duty of the controller to determine, where practicable, the unit cost of work done by the city and county for the purpose of determining whether similar work could be done under public contract at a lower cost. The controller shall devise adequate systems of internal check of all departments and offices of the city and county relative to the custody, collection or disbursement of moneys.

Cited in **Rand v. Collins** (1931) 214 Cal. 168, 4 Pac. (2d) 529.

Controller's Reports

SECTION 65. The controller shall annually make a complete financial report which shall be audited and distributed as provided in section 68 of this charter. The controller shall also make a quarterly report not later than the 25th day of the month succeeding the last preceding quarter, showing a summary statement of revenues and expenditures for the preceding quarter and for that portion of the fiscal year ending on the last day of such preceding quarter. Such statement shall include all general and funding accounts and shall be detailed as to assets, liabilities, income, expenditures, appropriations and funds, in such manner as to show the financial conditions of the city and county and of each department, office, bureau or division thereof, for that portion of the fiscal year to and including the preceding quarter, and with comparative figures for the similar period in the preceding fiscal year.

The controller shall at the same time prepare statements showing at the end of each quarter the cash position of the city and county (and the unencumbered balance in each fund). He shall also prepare quarterly for each of the several funds a summary of the resources available and estimated to be collectible, obligations authorized and estimated to be expendable, and surplus in such a manner as to show the estimated cash position of each fund at the end of the fiscal year. He shall also prepare monthly and transmit to all department heads concerned, reports showing the allowances, expenditures, encumbrances and unencumbered balances of each revenue and expenditure appropriation. A copy of each such quarterly report and special fiscal reports as requested, shall be transmitted to the mayor, the board of supervisors, the chief administrative officer, and kept on file in the controller's office. [*Amended, 1935*]

Cited in **Rand v. Collins** (1931) 214 Cal. 168, 4 Pac. (2d) 529.

Audits by Controller

SECTION 66. The controller shall audit the accounts of all boards, officers and employees of the city and county charged in any manner with the custody, collection, or disbursement of funds. The controller shall audit monthly all accounts of money coming into the hands of the treasurer. He shall make an audit monthly of each departmental revolving fund authorized by this charter or by the board of supervisors.

When requested by the mayor, the board of supervisors, the chief administrative officer, or any board or commission for its own department, he shall audit the accounts of any officer or department, and on the death, resignation, removal, expiration of term or retirement of the head of any department or office, or any officer or employee charged with the receipt, collection or disbursement of money, shall make an audit of the accounts of such department, officer or employee.

Custody and Examination of Official Bonds

SECTION 67. The controller shall be the custodian of all official bonds excepting the bond of the controller, which shall be in the custody of the mayor. The controller must at least once in every

six months examine all official bonds and investigate the sufficiency and solvency of the sureties thereon, and forthwith report in writing the facts to the mayor. Upon receipt of such report, the mayor shall take such action as shall be necessary to protect the city and county, and may require new bonds and may suspend any officer or employee until a sufficient bond is filed and approved. The mayor shall make similar periodic examination of the controller's bond.

Annual Audits by Supervisors

SECTION 68. The board of supervisors shall order an annual audit of the controller's books of accounts, records and transactions, to be made by one or more certified public accountants. The report of such auditor or auditors for the fiscal year shall be printed and a copy thereof furnished to the mayor, each member of the board of supervisors, the chief administrative officer, and the controller, and to such citizens as may apply therefor.

BUDGET AND FISCAL PROCEDURE

Budget Estimates

SECTION 69. The fiscal year for the city and county shall begin on the 1st day of July of each year.

The budget estimate for every department and office of the city and county, whether under an elective or an appointive officer or a board or commission, and separately for each utility under the control of the public utilities commission, shall be filed by the executive of such department with, and shall be acted upon by, such board or commission. All budget estimates shall be compiled in such detail as shall be required on uniform blanks furnished by the controller. The public utilities commission and the board of education must hold public hearings on their respective budget proposals. Each such elective and appointive officer, board or commission shall, not later than the 1st day of February of each year, file with the controller for check as to form and completeness two copies of the budget estimate as approved.

The chief administrative officer shall obtain in ample time to pass thereon budget estimates from the heads of departments or offices subject to his control, and, after adjusting or revising the same, not later than the 1st day of February he shall transmit such budget estimates to the controller.

The controller shall check such estimates and shall upon his request, be furnished with any additional data or information. Not later than the 1st day of March of each year he shall consolidate such budget estimates and transmit the same to the mayor.

He shall at the same time transmit to the mayor a summary and recapitulation of such budget estimates, segregated by separate departments or offices and units thereof, or by purposes for non-departmental expenditures, and arrange according to classification of objects of expenditure, as required by the controller, to show the amount of proposed expenditures and estimated revenues in comparison with the current and previous fiscal year's expenditures and revenues.

He shall submit at the same time (1) statements showing revenues and other receipts, including the estimated unencumbered surplus in any item or fund at the beginning of the ensuing fiscal

§ 69-69.1

year, segregated according to specific or general purposes to which such revenues or receipts are legally applicable, for the last complete fiscal year and for the first six months of the current fiscal year, with estimates thereof for the last six months of the current fiscal year, together with estimates of such revenues and receipts for the ensuing fiscal year; (2) statements of the amounts required for interest on, and sinking fund or redemption of, each outstanding bond issue, and for tax judgments, and other fixed charges, together with estimates of interest required on bonds proposed to be sold during the ensuing fiscal year, and statements of the city's authorized debt, and judgments outstanding at the time the budget estimates are submitted.

The mayor shall hold such public hearings on these budget estimates as he may deem necessary and may increase, decrease or reject any item contained in the estimates, excepting that he shall not increase any amount nor add any new item for personal services, materials, supplies or contractual services, but may add to the requested appropriations for any public improvement or capital expenditure; but he shall add to requested appropriations for any public improvement or capital expenditure only after such items have first been referred to the department of city planning and a report has been rendered thereon regarding conformity with the master plan. It shall be the duty of the department of city planning to render its reports in writing within thirty days after said referral. Failure of the department of city planning to render any such report in such time shall be deemed equivalent to a report. The budget estimates of expenditures for any utility, within the estimated revenues of such utility, shall not be increased by the mayor. [*Amended, 1935; 1947; 1948*]

The budget-making procedure, of which this section is a part, is in accord with § 20 in giving a department head broad power in effecting the reduction of forces under his jurisdiction. **Hanley v. Murphy** (1953) 40 Cal. (2d) 572, 255 Pac. (2d) 1.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **Villain v. Civil Service Commission** (1941) 18 Cal. (2d) 851, 117 Pac. (2d) 880; **Sullivan v. McKinley** (1939) 14 Cal. (2d) 113, 92 Pac. (2d) 892; **Tevis v. San Francisco** (1954) 43 Cal. (2d) 190, 272 Pac. (2d) 757; **Butler v. San Francisco** (1951) 104 Cal. App. (2d) 126, 231 Pac. (2d) 75.

Capital Improvement Projects Budget

SECTION 69.1. Each officer, board, and commission shall annually, on or before the 30th day of November, file with the

department of city planning a schedule describing all capital improvement projects which are proposed for inclusion in the budget for the ensuing fiscal year, together with a schedule of all capital improvement projects which in the opinion of such officer, board, or commission should be undertaken in the five succeeding years.

The department of city planning shall prepare and submit to the mayor, the board of supervisors, the controller, and each officer, board, or commission concerned, on or before the 20th of January, a report recommending a program of capital improvements based on the projects submitted for inclusion in the budget for the ensuing year, segregating in such report those projects which do not affect the master plan.

The report shall state whether each of the proposed capital improvement projects conforms to the master plan and if conformity does not exist the report shall give the particulars of the differences between the proposed capital improvement projects and the master plan; provided, however, that if any such capital improvement project does not conform, it shall be the duty of the department of city planning, prior to the submission of its related report, to confer with the officer, board, or commission concerned for the purpose of modifying either the project plan or the master plan in an endeavor to eliminate conflict as far as may be possible.

The report shall also include the recommendations of the department of city planning for additional capital improvement projects and for the advance planning and acquisition of land necessary for the development of all capital improvement projects.

Requests for supplemental appropriations for capital improvement projects, which projects have not been previously submitted to the department of city planning, shall be subject to all of the provisions herein contained except time, and the department of city planning shall report on each such proposal within thirty days from the date that each such proposal is filed with it.

The board of supervisors shall not appropriate any money for any capital improvement project which has not been referred to and reported on by the department of city planning in accordance with the provisions of this section.

Failure of the department of city planning to report within the time limits herein established shall constitute its concurrence.
[*New section, 1948*]

Form of Budget Estimates

SECTION 70. The classification of proposed expenditures included in budget estimates shall be uniform for all departments, offices, bureaus, divisions and branches. The estimates shall include or be accompanied by the following information:

(1) An itemized estimate of the total expense of conducting each department, bureau, division, office or board for the ensuing fiscal year, together with a separate schedule of the proposed work program.

(2) Statements of the expenditures by items for the last complete fiscal year, and for the first six months of the current fiscal year, together with an estimate of probable expenditures by items for the last six months of the current fiscal year.

(3) The reasons for proposed increases or decreases, as compared with the current fiscal year, in any items of the proposed estimate.

(4) A schedule of positions and compensations showing any increases or decreases requested in the number of positions or rates of pay.

(5) Such other information as the mayor or the chief administrative officer may deem desirable.

The budget-making procedure, of which this section is a part, is in accord with § 20 in giving a department head broad power in effecting the reduction of forces under his jurisdiction. **Hanley v. Murphy** (1953) 40 Cal. (2d) 572, 255 Pac. (2d) 1.

Cited in **Butler v. San Francisco** (1951) 104 Cal. App. (2d) 126, 231 Pac. (2d) 75; **Sullivan v. McKinley** (1939) 14 Cal. (2d) 113, 92 Pac. (2d) 892.

Salary Deductions

SECTION 70.1. Whenever, in the judgment of the mayor and the board of supervisors, extraordinary economic conditions actually exist due to unemployment, fire, earthquake, flood or other calamity, which adversely affect the life, health and welfare of the citizens of the city and county or of any considerable portion thereof, the board of supervisors, by a three-fourths vote of all of its members, with the concurrence of the mayor, shall have power as follows, to-wit:

Sub. 1. To officially declare that a public emergency exists, and to fix the approximate anticipated time during which said emer-

gency shall continue, provided that no such emergency shall be anticipated to continue beyond the end of the fiscal year during which the same is declared, unless such emergency be declared subsequent to the 1st day of January of said year, in which event the said emergency may be anticipated to continue until the end of the next succeeding fiscal year.

Sub. 2. To provide that while said emergency as declared shall continue to exist there shall be deducted from the gross salaries and compensations, exclusive of pension and retirement allowances, of each officer and employee of the City and County of San Francisco, including officers and employees of the board of education, not more than the respective amounts hereinafter set forth. Said deductions shall be made on the basis of the salary and compensation rate of said several officers and employees which were in effect during the calendar month immediately preceding the month during which said emergency was declared and not reduced by this section.

If said salary and compensation deductions are not reflected in the annual budget and appropriation ordinances, as set forth in subdivision 3 of this section, the amount of said deductions shall be used for the purpose of meeting or alleviating the emergency which has been declared, or to balance any deficiency existing in the general funds of the city arising by reason of the delinquency in the payment of taxes or other revenue as compared with the anticipated revenues over the same period. Provided that where salaries or compensations are paid out of bond funds, utility funds, or other trust funds, which are not provided from the revenues of the city, all deductions made shall revert to the respective funds from which said salaries or compensations are paid.

The maximum deductions from the salary or compensation of each officer or employee heretofore referred to shall be as follows, to-wit:

(a) From the salaries or compensation of officers or employees whose gross earnings exceed \$100 per month and do not exceed \$120 per month, three (3) per cent of the amount of the gross monthly earnings of each of said officers or employees.

(b) From the salaries or compensations of officers or employees whose gross earnings exceed the sum of \$120 per month and do

§ 70.1

not exceed the sum of \$150 per month, seven (7) per cent of the gross monthly earnings of each of said officers or employees.

(c) From the salaries or compensations of officers or employees whose gross earnings exceed the sum of \$150 per month, and do not exceed the sum of \$185 per month, ten (10) per cent of the gross monthly earnings of each of said officers or employees.

(d) From the salaries or compensations of all officers or employees whose gross earnings exceed the sum of \$185 per month, and do not exceed the sum of \$275 per month, twelve and one-half (12½) per cent of the gross monthly earnings of each of said officers or employees.

(e) From the salaries or compensations of all officers or employees whose gross earnings exceed the sum of \$275 per month, and do not exceed the sum of \$600 per month, fifteen (15) per cent of the gross monthly earnings of said officers or employees.

(f) From the salaries or compensations of all officers or employees whose gross earnings exceed the sum of \$600 per month and do not exceed the sum of \$834 per month, eighteen (18) per cent of the gross monthly earnings of each of said officers or employees.

(g) From the salaries or compensations of all officers or employees whose gross earnings exceed the sum of \$834 per month, twenty (20) per cent of the gross monthly earnings of each of said officers or employees.

(h) Provided, however, that no more than five and one-half (5½) per cent of the gross monthly earnings of per diem employees whose compensations are fixed on the basis of a five-day week shall be deducted from the salaries or earnings of any such employee.

Said deductions shall be made from said earnings or compensations in monthly or semi-monthly installments according to the time at which said salaries or compensations are paid, provided that where the earnings of any officer or employee are on an hourly or per diem basis deductions based on his total earnings for the month shall be deducted from the installment of said earnings paid for the last half of the month.

Sub. 3. Should any such emergency declared as herein pro-

vided be anticipated to continue into the next fiscal year following the one during which said emergency has been declared, the heads of all departments, the controller and the mayor, in preparing or submitting their respective annual budget estimates, shall base and estimate the net salaries and compensations to be paid to the officers and employees of their respective departments, or, in the case of the mayor and the controller, to be paid to the officers and employees of all departments, at amounts not to exceed the said salaries and compensations as reduced by the above-mentioned percentages on the above-mentioned salary and compensation rates, and the annual appropriation and salary ordinance shall fix said net salaries and compensation accordingly. When any emergency is declared after the annual budget is prepared or adopted, or after the annual appropriation or salary ordinances are enacted, and before the annual tax rate is fixed as provided by law, said budget and said appropriation and salary ordinances may be revised or reenacted, so that the deductions herein authorized to be made may be reflected in the amount of the tax levy.

Sub. 4. All of such deductions, whether made after the passing of the annual budget appropriation and salary ordinance or included therein, shall be deemed as temporary deductions from the salaries and compensations of said officers and employees, and shall be continued only during the anticipated period for which said emergency has been declared.

Sub. 5. In making the deductions herein provided for, the value of board, room and laundry or other maintenance furnished by the city and county to any officer or employee, when the same is made a part of his compensation by the civil service commission, shall be added to the monetary salary or compensation paid to said employee, and the amount of deductions from said salary or compensation shall be based on said monetary salary plus the value of said board, room and laundry or other maintenance, provided that no deduction shall be made for quarters furnished to any officer or member of the fire department.

Sub. 6. During the period that any emergency shall exist after being so determined as hereinbefore provided, the controller, with the approval of the mayor and the board of supervisors, may reallocate any unencumbered balance, or any part thereof, to the credit of any department or office exclusive of moneys or appro-

§ 70.1

priations made or required to be made to any bond, bond interest, bond redemption, pension, utility, or trust fund, so that the same shall be available to meet the necessities of said emergency, irrespective as to whether the amount allocated to said department or office is fixed by this charter or is the result of a tax provided by said charter to be levied for said department. Should the period during which said emergency is anticipated to exist extend beyond the end of the fiscal year in which the same was declared to exist, the mayor, with the approval of the board of supervisors, may reduce the amount of any mandatory appropriation provided to be allocated to any office or department; or may reduce the amount of any tax provided by the charter to be levied for the support or maintenance of any department or office. Provided that no such deduction in appropriation, provided by this charter to be made to any department, or in the reallocation of funds, or reduction in the amount of said tax otherwise provided to be levied to produce funds for any department, shall be greater than is necessary to reflect the deductions in salaries provided in the section to be made by reason of said emergency.

The provisions of this section shall have precedence over conflicting provisions of this charter, but nothing herein contained shall adversely affect the rights of the officials and employees as set forth in section 71 of the charter, during the period when no public emergency exists. Contributions by the city and county and by members of the San Francisco City and County Employees' Retirement System to, and benefits, pension payments and allowances under said retirement system, shall be calculated on the basis of gross salaries and compensations of such members in the same manner and amounts as if no deductions from said gross salaries and compensations were made under this section.

Within ten days after this amendment becoming effective, the board of supervisors and the mayor shall officially declare, by resolution, that a public emergency exists in San Francisco within the meaning of this section; and that it is anticipated that said emergency will continue until the end of the fiscal year 1933-1934, and the deductions from salaries and compensations at the maximum rates herein provided shall be effective until the end of said fiscal year.

Should any emergency be declared pursuant to the provisions of this section, which will be effective after the end of the fiscal

year 1933-1934, which, in the judgment of the board of supervisors, will necessitate deductions from the salaries of the officers and employees of the city and county, over and above the amounts herein provided for, the board of supervisors, by unanimous vote of all of its members, and with the approval of the mayor, may authorize a further deduction from the salaries and compensations of any of said officers and employees by increasing the maximum deductions in this section provided for, up to and including an amount not to exceed twenty-five (25) per cent of said respective salaries or compensations as the same existed before any deduction by authority of this section. [*New section, 1933*]

The fact that employees may be paid out of a bond fund or other special fund does not exclude them from the operation of this section. **Snell v. Byington** (1934) 2 Cal. App. (2d) 127, 37 Pac. (2d) 734.

Employees of the Hetch Hetchy Project Department, working outside San Francisco on aqueduct and tunnel construction, were subject to the provisions of this section and to the resolution of the board of supervisors reducing the compensation of officers and employees as therein provided. **Snell v. Byington** (1934) 2 Cal. App. (2d) 127, 37 Pac. (2d) 734.

Personal Service Estimates

SECTION 71. All increases in salaries or wages of officers and employees shall be determined at the time of the preparation of the annual budget estimates and the adoption of the annual budget and appropriation ordinances, and no such increase shall be effective prior to the fiscal year for which the budget is adopted. Salary and wage rates for classes of employments subject to salary standardization, as in this charter provided, shall be fixed in the manner provided in this charter. Salary and wage rates for classes of employment not subject to salary standardization, exclusive of compensations fixed by this charter, shall be recommended by the officer, board or commission having appointive power for such employments, and fixed by the budget and the annual salary ordinance. Pending the adoption of salary standards as in this charter provided, the salary and wage rates for positions subject to such standardization shall be as recommended by the officer, board or commission having appointing power for such positions and fixed by the budget and annual salary ordinance; provided that the minimum compensation for employees subject to the civil service provisions of this charter shall be not less than fifty cents (50c) per hour nor less than one hundred six dollars (\$106) per month; and provided further that any compen-

sation paid as of January 1, 1931, to an incumbent who legally held a position in the city and county service at that time, shall not be reduced so long as such incumbent legally holds such position. No compensation other than the minimum as in this section provided shall be increased so as to exceed the salary or wage paid for similar services of like character and for like service and working conditions in other city departments or in private employments, nor so as to exceed the rate fixed for such service or position in the proposed schedule of compensations issued by the civil service commission under date of April 9, 1930, except as such proposed schedule or compensation is amended as provided in this charter, or extended by the civil service commission to include classification not included therein. [*Amended, 1940*]

The provision of this section relating to increases in salaries and wages was violated by granting in the salary ordinance an increase in wages when a lower wage was scheduled in the budget estimate, the budget founded upon it, approved and adopted by the mayor and the board of supervisors, and the appropriation ordinance. **Sullivan v. McKinley** (1939) 14 Cal. (2d) 113, 92 Pac. (2d) 892.

Under the provision of this section that pending adoption of salary standards, the salary and wage rates for positions subject to standardization shall be as recommended by the appointing powers and fixed by the budget and salary ordinance, it is the budget and salary ordinance that controls compensations, rather than the recommendation of the appointing power. **Banks v. Civil Service Commission** (1937) 10 Cal. (2d) 435, 74 Pac. (2d) 731.

The proviso of this section that "any compensation paid as of January 1, 1931 to an incumbent who legally held a position in the city and county service at that time, shall not be reduced so long as such incumbent legally holds such position," read in the light of the entire section, prohibits a reduction in wage rate, but not in the number of hours or days of employment. **Weigle v. San Francisco** (1937) 23 Cal. App. (2d) 274, 72 Pac. (2d) 902.

From §§ 71-73, 151, the power to fix compensation for officers (other than those whose compensation is expressly fixed in the charter) and employees is in the board of supervisors. The public utilities commission did not have authority to reduce the compensation of the manager of the airport employed prior to the effective date of the charter. **Francis v. Leavy** (1933) 131 Cal. App. 619, 21 Pac. (2d) 979.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **Butler v. San Francisco** (1951) 104 Cal. App. (2d) 126, 231 Pac. (2d) 75; **Dunn v. Civil Service Commission** (1935) 3 Cal. App. (2d) 554, 40 Pac. (2d) 310; **King v. Leavy** (1932) 124 Cal. App. 422, 12 Pac. (2d) 661, (increase in compensation; salary and wage rates pending adoption of salary standards).

Adoption of the Budget and the Appropriation Ordinance

SECTION 72. Not later than the 15th day of April in each year, the mayor shall transmit to the board of supervisors the consoli-

dated budget estimates for all departments and offices of, and the proposed budget for, the city and county for the ensuing fiscal year, including a detailed estimate of all revenues of each department and an estimate of the amount required to meet bond interest, redemption and other fixed charges of the city and county, and the revenues applicable thereto. He shall, by message accompanying such proposed budget, comment upon the financial program incorporated therein, the important changes as compared with the previous budget, and bond issues, if any, as recommended by him.

The mayor shall submit to the board of supervisors, at the time that he submits said budget estimates and said proposed budget, a draft of the annual appropriation ordinance for the ensuing fiscal year, which shall be prepared by the controller. This shall be based on the proposed budget and shall be drafted to contain such provisions and detail as to furnish an adequate basis for fiscal and accounting control by the controller of each revenue and expenditure appropriation item for the ensuing fiscal year. Upon submission it shall be deemed to have been regularly introduced, and together with the proposed budget, shall be published as required for ordinances.

The detail of the proposed budget to be published shall be as follows:

1. Total cost for conducting each department, bureau, office, board or commission for the ensuing fiscal year, segregated according to basic objects of expenditure for each.

2. A detail schedule of positions and compensations, showing any increases or decreases in any department or office.

3. A detail schedule of items for capital outlay.

4. The aforementioned consolidated estimates and schedules shall also include by items contained therein the following information:

- (a) Expenditures for the last complete fiscal year.

- (b) Estimated expenditures for the current fiscal year.

- (c) Proposed increases or decreases as compared with the budget allowances for the current fiscal year.

The board of supervisors shall provide printed copies of the mayor's budget message and proposed budget thus prepared, in-

cluding comparative expenditures and revenues for the current and preceding fiscal years and other information transmitted therewith, for official use and public demand as requested.

The board of supervisors shall fix the date or dates, not less than five days after publication as in this section provided, for consideration of and public hearings on the proposed budget and proposed appropriation ordinance.

The board of supervisors may decrease or reject any item contained in the proposed budget, but shall not increase any amount or add any new item for personal services or materials, supplies, or contractual services, for any department, unless requested in writing so to do by the mayor, on the recommendation of the chief administrative officer, board, commission or elective officer, in charge of such department.

The board of supervisors may increase or insert appropriations for capital expenditures and public improvements, but shall do so only after such items have first been referred to the department of city planning and a report has been rendered thereon regarding conformity with the master plan. It shall be the duty of the department of city planning to render its reports in writing within thirty days after said referral. Failure of the department of city planning to render any such report in such time shall be deemed equivalent to a report.

The budget estimates of expenditures for any utility, within the estimated revenues of such utility, shall not be increased by the board of supervisors.

After public hearing, and not earlier than the 15th day of May, nor later than the 1st day of June, the board shall adopt the proposed budget as submitted or as amended and shall pass the necessary appropriation ordinance. If the appropriation ordinance as submitted by the mayor is amended by the supervisors, the appropriation ordinance shall be readvertised prior to final reading or passage, in the manner required for ordinances.

Any item in such appropriation ordinance except for bond interest, redemption or other fixed charges, may be vetoed in whole or in part by the mayor within ten days of receipt by him from the clerk of the board of supervisors of the ordinance as passed by the board, and the board of supervisors shall act on such veto not later than the 20th day of June.

The several items of expenditure appropriated in each annual appropriation ordinance, being based on estimated receipts, income or revenues which may not be fully realized, it shall be incumbent upon the controller to establish a schedule of allotments, monthly or quarterly as he may determine, under which the sums appropriated to the several departments shall be expended. The controller shall revise such revenue estimates monthly. If such revised estimates indicate a shortage the controller shall hold in reserve an equivalent amount of the corresponding expenditure appropriations set forth in any said annual appropriation ordinance until the collection of the amount as originally estimated is assured, and in all cases where it is provided by this charter that a specified or minimum tax shall be levied for any department the amount of the appropriation in any annual appropriation ordinance derived from taxes shall not exceed the amount actually produced by the levy made for said department. The controller in issuing warrants or in certifying contracts or purchase orders or other encumbrances, pursuant to section 86 of this charter, shall consider only the allotted portions of appropriation items to be available for encumbrance or expenditure and shall not approve the incurring of liability under any allotment in excess of the amount of such allotment. In case of emergency or unusual circumstance which could not be anticipated at the time of apportionment, an additional allotment for a period may be made on the recommendation of the department head and that of the chief administrative officer, board or commission and the approval of the controller. After the allotment schedule has been established or fixed, as heretofore provided, it shall be unlawful for any department or officer to expend or cause to be expended a sum greater than the amount set forth for the particular activity in the said allotment schedule so established unless an additional allotment is made, as herein provided.

Subject to the restrictions hereinbefore in this section included, the several amounts of estimated revenue and proposed expenditures contained in the annual appropriation ordinance as adopted by the board of supervisors shall be and become appropriated for the ensuing fiscal year to and for the several departments, bureaus, offices, utilities, boards or commissions, and for the purposes specified, and each department for which an expenditure appropriation has been made shall be authorized to use the money so

appropriated for the purposes specified in the appropriation ordinance, and within the limits of the appropriation. The appropriation ordinance shall constitute the authority for the controller to set up the required revenue and expenditure accounts. Appropriation items for bond interest, bond redemption, fixed charges and other purposes not appropriated to a specific department shall be subject to the administration of and expenditure by the chief administrative officer for the respective purposes for which such appropriations are made. [*Amended, 1935; 1947; 1948*]

The existence of funds from which payments of claims may be made is an essential prerequisite to the payment of such claims, and in an action for mandate to compel the drawing of a warrant by a public official allegation and proof of available money are essential elements of the petitioner's case. **Tevis v. San Francisco** (1954) 43 Cal. (2d) 190, 272 Pac. (2d) 757.

The right of employees to receive accumulated vacation pay under § 151.5 accruing on the effective date of that section, September 26, 1950, the legal liability of the city for payment should have been treated as an obligation of the fiscal year 1950-1951. **Tevis v. San Francisco** (1954) 43 Cal. (2d) 190, 272 Pac. (2d) 757.

The budget-making procedure, of which this section is a part, is in accord with § 20 in giving a department head broad power in effecting the reduction of forces under his jurisdiction. **Hanley v. Murphy** (1953) 40 Cal. (2d) 572, 255 Pac. (2d) 1.

This section does not authorize an expenditure pursuant to a contract which otherwise is not in compliance with charter requirements. **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904.

Cited in **Butler v. San Francisco** (1951) 104 Cal. App. (2d) 126, 231 Pac. (2d) 75; **Francis v. Leavy** (1933) 131 Cal. App. 620, 21 Pac. (2d) 979 (appropriation ordinance); **King v. Leavy** (1932) 124 Cal. App. 422, 12 Pac. (2d) 661, (consolidated budget estimate; draft of appropriation ordinance).

Corresponding provision (§ 3, Ch. 1, Art. III) of former charter cited in **Fitzgerald v. Badaracco** (1927) 202 Cal. 18, 258 Pac. 937; **Esberg v. Badaracco** (1927) 202 Cal. 110, 259 Pac. 730.

Annual Salary Ordinance

SECTION 73. The number and rates of compensation for all positions continued or created by the supervisors in adopting each annual budget, and each annual or supplemental appropriation ordinance, shall be established and enumerated in an ordinance continuing and creating positions in city and county departments and offices, and providing the rates of compensation therefor, which ordinance shall be passed or amended at the same time as the annual or supplemental appropriation ordinance is passed. Such ordinance shall be subdivided for each department or office and each organization subdivision thereof. The number of posi-

tions enumerated therein shall be segregated by classes according to the civil service classification of employments and the positions in any department or office under any such class shall not be listed individually or subdivided, except where necessary to show varying rates of pay for employments included in any such class. Rates of compensation enumerated shall be those established by salary standardization schedules, and shall not be listed for individuals or individual positions, except where the compensation of incumbents is higher than the rate fixed by salary standardization, which compensation shall not be reduced so long as the incumbents legally hold such positions. Notwithstanding the provisions of Section 13 of this charter with respect to amendment of sections of ordinances any change in the number of positions allowed for any department or office, and seniority or other compensation increases authorized as provided elsewhere in this charter for officers or employees, may be covered by amendment of the appropriate item or items of the ordinance herein referred to. The said ordinance shall constitute the legal basis for check by the civil service commission or the controller as to the legality of the creation of any position in the city and county service and the rate of compensation fixed therefor. [*Amended, 1963*]

In determining the question of the personal liability of the controller for the allowance, and the treasurer for the payment, of salary claims illegally approved by an appointing officer, § 150 and this section must be read with § 86. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

In allowing and paying salary claims, the controller and the treasurer are not required under § 86, when read together with § 150 and this section, to pass upon the legality of the claimant's appointment; they are simply required to see to it that payments are not made unless they comply with procedure set up in the charter; they are not required to go beyond the certifications of the department head and the secretary of the commission as to the legality of the appointment. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **Butler v. San Francisco** (1951) 104 Cal. App. (2d) 126, 231 Pac. (2d) 75; **Dunn v. Civil Service Commission** (1935) 3 Cal. App. (2d) 554, 40 Pac. (2d) 310; **Francis v. Leavy** (1933) 131 Cal. App. 620, 21 Pac. (2d) 979 (salary ordinance).

Appropriations to Meet Utility Deficits

SECTION 74. In the event the public utilities commission and the mayor shall propose a budget for any utility which will exceed the estimated revenue of such utility, it shall require a vote of two-thirds of all members of the board of supervisors to approve

such budget estimate and to appropriate the funds necessary to provide for the deficiency. Such budget of expenditures in excess of estimated revenues may be approved to provide for and include proposed expenditures for additions, betterments, extensions or other capital costs, in amount not to exceed three-quarters of one cent (\$.0075) on each one hundred dollars (\$100) valuation of property assessed in and subject to taxation by the city and county, provided that whenever tax support is required for additions, betterments, extensions or other capital costs the total provision for such purposes shall not exceed an amount equivalent to three-quarters of one cent (\$.0075) on each one hundred dollars (\$100) valuation of property subject to taxation by the city and county and provided further that proposed expenditures for additions, betterments, extensions or other capital costs in excess thereof shall require financing by authorization and sale of bonds. This section shall have precedence over section 127 of this charter and any other section deemed in conflict herewith. [*Amended, 1957*]

Departmental Revolving Funds

SECTION 75. The supervisors, on the recommendation of the mayor, in any proposed annual budget, may, in the approval of such budget and the annual appropriation ordinance therefor, establish departmental revolving funds to be used as petty cash funds for specific purposes and to be subject to settlement with, and audit by, the controller at least monthly, as provided in section 66. The mayor shall recommend and the supervisors shall establish revolving funds designated in this charter as the special election fund and the purchaser's revolving fund, and they shall respectively recommend and establish such revolving funds as may be necessary to facilitate the operation of each utility and institution of the city and county.

Appropriation Accounts — Designation of Funds

SECTION 76. Accounts shall be kept by the controller showing the amount of each class or item of revenue as estimated and appropriated in the annual appropriation ordinance, and the

amounts collected. Accounts shall also be kept by the controller of each expense appropriation item authorized by the board of supervisors. Every warrant on the treasury shall state specifically by title and number the appropriation item against which such warrant is drawn.

Each such revenue and expense account shall show in detail the amount of the appropriation or appropriations made therefor by the supervisors, the amount drawn thereon, the amount of encumbrance for purchase orders, contracts or other obligations theretofore certified by the controller as against it, and the unencumbered balance to the credit thereof. This balance shall be the "unencumbered balance" as this term is used in this charter.

Transfers

SECTION 77. Upon written recommendation of the chief administrative officer, or board or commission for the use of which funds have been appropriated, and the approval of the mayor, the board of supervisors may transfer an unencumbered balance, or part thereof, of an appropriation made for the use of one department, to another. No such transfer shall be made of utility, bond, school, pension or trust funds, except by way of loans as in this charter provided. On request of a department head and approval by the chief administrative officer, board or commission, respectively, and on the authorization of the controller, funds appropriated for a specific purpose of such department which become surplus may be transferred and used for another specific purpose within the department; provided, however, that such surplus shall not be transferred to a capital improvement project unless such project shall have been previously approved in accordance with the provisions of sections 69, 69.1, 72 or 116.1 of this charter. The controller shall prescribe the method to be used in making payments for inter-departmental services. [*Amended, 1948*]

Under this section authorizing transfer and use of a surplus for another purpose within a department, and § 128.1, authorizing creation of a fund for reconstruction and replacements due to functional depreciation of utilities, a surplus of the municipal railway reconstruction and replacement fund may be expended for services of a civil engineer to make surveys and reports with respect to traffic and transit conditions, and extensions and improvements of the municipal railway. **San Francisco v. Boyd** (1941) 17 Cal. (2d) 606, 110 Pac. (2d) 1036.

Tax Levy

SECTION 78. On or before the 15th day of September of each year, the board of supervisors by ordinance shall levy a tax, the estimated proceeds of which, together with the total amount of receipts and revenues estimated to be received from all sources, will be sufficient to meet all appropriations made by the annual appropriation ordinance.

Revenue to meet current annual interest and redemption or sinking fund for outstanding bonds shall always be provided out of the tax levy; provided, however, that to the extent to which funds are appropriated by the public utilities commission, and available for annual interest and redemption or sinking fund on bonds issued for acquisition, construction or extension of any utility, no tax shall be levied therefor.

The tax levy shall not exceed the rate of one dollar and sixty-five cents (\$1.65) on each one hundred dollars (\$100) valuation of the property assessed in and subject to taxation by the city and county, exclusive of the following items: (1) State taxes, and taxes for the interest and sinking fund on bonded indebtedness of the city and county; (2) the cost of constructing, maintaining and improving (a) schools, (b) libraries, which tax shall not be less than four cents on each one hundred dollars, (c) parks and squares, which tax shall be not less than ten cents on each one hundred dollars, (d) playgrounds, which tax shall be not less than seven cents on each one hundred dollars, (e) for the art commission for the purpose of maintaining a symphony orchestra one-half cent on each one hundred dollars of said assessed valuation, (f) streets, sewers and buildings; (3) the cost of (a) elections, (b) civil service, which tax shall not be less than one-half cent on each one hundred dollars, (c) obligations imposed by state legislative or constitutional enactment and (d) obligations imposed by vote of the people of the city and county. [*Amended, 1935*]

Cited in **Butler v. San Francisco** (1951) 104 Cal. App. (2d) 126, 231 Pac. (2d) 75; **Villain v. Civil Service Commission** (1941) 18 Cal. (2d) 851, 117 Pac. (2d) 880.

Corresponding provision (§ 12, Ch. 1, Art. III) of former charter cited in **Fitzgerald v. Badaracco** (1927) 202 Cal. 18, 258 Pac. 937.

Emergency Reserve Fund

SECTION 79. The tax rate may be fixed by the board of supervisors so as to produce, by a specifically designated rate, as recommended by the mayor in any proposed annual budget and the appropriation ordinance therefor, an amount necessary for an emergency reserve fund, which fund is hereby created, for the purposes of meeting any emergency as defined in sections 16 or 25 of this charter. Appropriations from such emergency reserve fund shall be made only on the recommendation of the department head concerned, the approval of the chief administrative officer or the board or commission in charge of such department, the recommendation of the mayor to the board of supervisors that such appropriation be made, and the vote of three-fourths of the board of supervisors.

The balance in said emergency reserve fund at the end of any fiscal year shall be maintained and carried forward in said fund.

The annual appropriation for said fund and the annual tax rate therefor shall not exceed one per centum of the amount of the levy required to meet all other expense appropriations unless and until the accumulated and unencumbered balance in said fund shall amount to a sum not to exceed three per centum of the tax levy required to meet all other expense appropriations in the then current fiscal year. The board of supervisors, on the recommendation of the mayor, may make appropriations to and may levy taxes for said emergency reserve fund in excess of said three per centum of the tax levy for all other purposes. [*Amended, 1933*]

Fund Balances—Supplemental Appropriations

SECTION 80. Unused and unencumbered appropriations or unencumbered balances existing at the close of any fiscal year in revenue or expense appropriations of the city and county for any such fiscal year, including such balances in revenue and expense appropriations provided under the provisions of section 78 of this charter for libraries, parks and squares, playgrounds and civil service in any such fiscal year, but exclusive of revenue or money required by law to be held in school, bond, bond interest, bond redemption, pension, trust, utility or other specific funds, or to be devoted exclusively to specified purposes other than annual appropriations, and together with revenues collected or accruing from any source during any such fiscal year, in excess of the estimated revenue from such source as shown by the annual budget and the appropriation ordinance for such fiscal year, shall be transferred by the controller, at the closing of such fiscal year, to a "cash reserve fund" which is hereby created and which may be used only in the manner authorized by section 81 of this charter; provided, however, that when the balance in said cash reserve fund shall equal ten (10) per centum of the current or the last preceding tax levy no such transfer shall be made by the controller except on the recommendation of said controller, the approval of the mayor and the authorization of the board of supervisors, by majority vote.

Such unused and unencumbered appropriations, balance and revenue collections in excess of revenue estimates, as hereinbefore in this section defined, when not transferred to the cash reserve fund as hereinbefore in this section required or authorized, shall be held as surplus.

Such surplus shall be taken into account as revenue of the ensuing fiscal year; provided, however, that any such surplus created in the fiscal year 1933-34 or created or existing in any subsequent fiscal year may be appropriated by the board of supervisors at the last meeting of such board in any month, by means of an ordinance designated as a supplemental appropriation ordinance, on the recommendation of the chief administrative officer, or any board, commission or elective officer, respectively, and the approval and submission by the mayor of a supplemental budget estimate or request, in the same manner and subject to the same conditions, except time, as provided in this charter for the submission and approval of the annual budget and the appropriation ordinance. [*Amended, 1933*]

**Cash Reserve Fund and Temporary Loans
Tax Anticipation Notes**

SECTION 81. The board of supervisors, by annual tax levy, may gradually build up the cash reserve fund authorized and created by the provisions of section 80 of this charter. Said fund shall be used exclusively (1) for the payment in any fiscal year of legally budgeted expenditures for such year in anticipation of the collection, after the close of such fiscal year, of legally collectible taxes and other revenues, as set forth in the budget and the appropriation ordinance for such fiscal year, and (2) for paying that portion of the authorized expenses of the city and county for any fiscal year, which, as certified to said board by the controller, becomes due and payable and must be paid prior to the receipt of tax payments for such fiscal year; provided, that such cash reserve fund shall not at any time exceed the estimated expenditures for the first five months of the then current fiscal year, less the amount of estimated revenues and receipts from sources other than tax rate revenues.

In the event that funds are not available in such a cash reserve fund to meet authorized expenditures of any fiscal year, the board of supervisors, on the recommendation of the controller and the mayor, and the written approval of the officer, board or commission responsible for the management and control of the fund from which it is proposed that the temporarily idle balances be transferred or loaned may, by ordinance, authorize the treasurer to make temporary transfers or loans for specified periods of idle

unencumbered balances in any fund in his custody, except a pension fund, at not less than the then current rate of interest paid by the banks to the city and county on city and county funds deposited with such banks. Such approval by the officer, board or commission concerned shall specify that the amount proposed to be transferred or loaned from such fund will not be needed for the purpose of such fund prior to the date specified for its return. The fund from which such transfer or loan is made shall be charged or encumbered with the amount of such transfer or loan and such amount shall not be considered as available in such fund for any other appropriation or encumbrance for which any expenditures or payments must be made prior to the date on which the transfer or loan is repaid. Any transfer or loan made as herein authorized during the first half of any fiscal year shall be repaid prior to the 1st day of January of said year, and any transfer or loan made during the remaining one-half of said fiscal year shall be repaid prior to the 15th day of May of said year. Such loans shall be secured by and made solely in anticipation of the collection of taxes levied or to be levied for the current fiscal year, and such loans shall constitute the first demand on and shall be repaid from the first tax collections for such current fiscal year; provided, however, that tax anticipation loans made as hereinafter in this section authorized, shall constitute a prior lien on said taxes levied or to be levied or collected.

When funds shall be needed for the immediate requirements of the city and county in any fiscal year in accordance with appropriations made as authorized by this charter for such fiscal year, which payments may be made in advance of the receipt of income from such fiscal year, and when funds therefor cannot be made available as hereinbefore in this section authorized, the board of supervisors on the recommendation of the controller and the approval of such recommendation by the mayor, shall have power to borrow money on notes or other evidences of indebtedness on behalf of the city and county. Said power shall be exercised by ordinance or ordinances authorizing the borrowing of said money and the execution of said notes or other evidences of indebtedness. The aggregate amount of such notes or other evidences of indebtedness outstanding and unpaid at any one time during any part of the fiscal year in which said borrowing is made shall not be in excess of 25 per cent of the estimated aggregate amount of all

taxes actually levied for such fiscal year. All such notes or other evidences of indebtedness shall be offered at public sale by the board of supervisors after not less than two days of advertising, not less than three days after the last day on which such advertising is published. Each such sale shall be made to the bidder offering the lowest rate of interest or whose bid represents the lowest net cost to the city and county; provided, however, that the rate of interest to be paid shall not exceed the sum of six (6) per centum per annum, and full authority is hereby given to said board of supervisors to fix, by resolution, the rate of interest on said notes or other evidences of indebtedness and the times and places where the principal sum of said notes or other evidences of indebtedness shall be paid. The principal amount of said notes or other evidences of indebtedness together with the interest thereon, issued and delivered under authority of this section shall be payable exclusively out of the taxes levied and collected by said city and county for the fiscal year during which the same are issued, and shall constitute a first lien and charge against the taxes collected during the half of the fiscal year in which said money shall be borrowed and shall be repaid from the first moneys received from said taxes; and the amount of taxes so levied and collected shall be applied to the payment of said notes or other evidences of indebtedness before any part thereof is used for any other purpose; provided, however, that taxes levied for the payment of principal of, or interest on, any bonded indebtedness of said city and county now outstanding or hereafter created shall be applied to the purpose for which such taxes were levied, unless the money borrowed by such notes or other evidences of indebtedness issued against such tax levies is in fact applied to the payment of the principal and interest of such bonded indebtedness. If at the time said notes or other evidences of indebtedness, or any of them, become due and payable the funds in the city treasury available for the payment thereof shall be insufficient for the payment in full of all of said notes or other evidences of indebtedness then outstanding such funds shall be applied pro rata to the payment of the principal and interest of all of the notes or other evidences of indebtedness then issued and outstanding without preference or priority of any one note over any other by reason of prior issuance, or otherwise. Any of said notes or other evidences of indebtedness not paid prior to June 30 of the fiscal year during which

the same are issued shall, nevertheless, be paid out of moneys received from the taxes of the said fiscal year, irrespective of the date of the receipt thereof, it being the intent and purpose of this section to provide for the payment of all notes or other evidences of indebtedness issued under authority of this section out of the taxes levied for the fiscal year during which said notes or other evidences of indebtedness are issued irrespective of the actual date of the collection of said taxes.

The board of supervisors shall have full power and authority to provide for the form of all notes or other evidences of indebtedness issued by authority of this section, as well as to fix the time and place for the payment of both the principal amount of said notes or other evidences of indebtedness and the interest to become due thereon; provided that all notes or other evidences of indebtedness issued for money borrowed during the first half of any fiscal year shall be payable not later than December 31 of said year; and all notes or other evidences of indebtedness issued for money borrowed during the second half of any fiscal year shall be payable not later than May 15 of such year, it being the intent and purpose of this section that the borrowing of money under authority hereof shall be solely for the purpose of anticipating receipt of income. The mayor, in preparing the consolidated budget estimate as provided by this charter, shall include therein a separate amount sufficient to meet the interest to be paid on any moneys borrowed under authority of this section. [*Amended, 1933; 1937*]

Receipt, Custody and Deposit of Funds, Investment of Trust Funds

SECTION 82. Disbursement of all public or other funds in the custody of the treasurer, except reimbursement transfers between departments as provided in section 77, shall be made only on warrants drawn by the controller. All moneys and checks received by any officer or employee of the city and county for, or in connection with the business of, the city and county, shall be paid or delivered into the treasury not later than the next business day after its receipt, and shall be receipted for by the treasurer. Daily statements of such receipts and deposits shall be prepared and transmitted to the controller and the treasurer. All pension funds and securities shall be deposited with the treasurer.

The deposit of public funds shall be governed by state law

enacted under authority of Article XI, Sections 16 and 16½ of the Constitution.

The treasurer shall not be responsible for any loss of public moneys resulting from a deposit thereof made in accordance with the provisions of this section. The treasurer shall be responsible for the safekeeping of all securities deposited by banks. The transfer of money for deposits shall be at the expense of the depository.

Funds received as gifts for a specific purpose, by donation, bequest, legacy or otherwise, and held in trust for the benefit of the city and county may, with the approval of the controller, be invested by the officer, board or commission charged with control and administration of such trust or funds in securities legal for savings banks.

All interest on moneys deposited shall accrue to the benefit of the city and county, except that interest derived from the deposit of any bond, utility, pension, trust or other fund created for a specific purpose shall accrue to such fund. Public money, other than that of the city and county, coming into the hands of the treasurer shall be kept as provided by law. [*Amended, 1949*]

Custody of Moneys and Securities

SECTION 83. The supervisors shall by ordinance provide for the safe custody of all money and property in the possession or under the control of the treasurer. Pending the adoption of such ordinance, moneys and securities in possession of the treasurer shall be deposited in a joint custody safe with two combination locks, both of which must be unlocked to open the safe. The combination of one lock shall be known only to the treasurer and one deputy in his office selected by him, and the combination of the other shall be known only to the controller and such assistant in his office as shall be selected by him. The joint custody safe shall be opened only in the presence of the treasurer and either the controller or the assistant in his office having knowledge of the combination, or in the presence of the controller and either the treasurer or the assistant in his office having knowledge of the combination, and either the controller or the said assistant shall attend, at the request of the treasurer, to open the joint custody safe.

A complete record of moneys and securities on deposit in the joint custody safe shall be kept in a joint custody account and the record of any withdrawals shall be verified by the initials of the controller or his said assistant and the treasurer or his said assistant. Money required for current daily payments to be made from the treasury may be withdrawn from the joint custody safe and deposited in another safe, and the balance thereof shall be verified daily at the close of business hours by the treasurer and the controller.

Clearing House Representative

SECTION 84. The board of supervisors, by ordinance, upon the recommendation of the mayor, the treasurer and the controller, may designate any bank qualified to be a depository under this charter to be the clearing house representative of the city and county, and the city and county may pay a reasonable fee for the service thereof. The necessary procedure shall be provided by ordinance.

Expenditures and Payment of Claims

SECTION 85. No money shall be drawn from the treasury of the city and county, nor shall any obligation for the expenditure of any money be incurred except in pursuance of appropriations or transfers made as in this charter provided.

All salaries and wages shall be payable semi-monthly. No salary or wage shall be paid in advance. It shall be official misconduct for any officer or employee to present or approve a claim for full-time or continuous personal service other than in the manner provided by this charter.

All warrants shall be drawn by the controller, in payment of claims, prepared and signed by the responsible official, for services, supplies and other obligations against the city and county, supported by proper invoices, bills and other necessary data.

The controller shall audit such claims. If he finds the same to be correct and proper in all particulars, and clearly within the purposes for which the appropriation item to which it is charged was made, and that there is an adequate balance in such appropriation item to meet the payment, he shall draw and approve the warrant therefor.

If all or any portion of the claim is not correct, or if all proceedings required incidental to such payment have not been followed, the controller may approve such part of such claim as he shall find correct and draw the warrant therefor, or he may return the claim to the department concerned with his disapproval.

Prior to his drawing any warrant therefor, the controller may, in addition to any other inspection required by any other official, make such investigation and inspection as he deems necessary as to the quality, quantity and condition of services, material, supplies or equipment received by any officer or department for which payment is to be made by such warrant. If, in his opinion, any claim is not legal, he shall withhold approval of the same and immediately return such claim, together with a statement of his action thereon and reason therefor, to the responsible official, or transmit the same to the mayor for instructions. No warrant shall be drawn in payment of a claim against a fund in which there is an insufficient unencumbered balance for the payment thereof. Such claims, if legal, shall be registered by the controller in the order of receipt by him, and shall be paid in such order as moneys to cover the same become available in the proper fund.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904.

SECTION 85.1. The board of supervisors shall have power by ordinance to provide the periods when salaries and wages earned shall be paid, provided that until such an ordinance becomes effective, all wages and salaries earned shall be paid semi-monthly as provided in Section 85. Upon the effective date of an ordinance adopted in accordance with this section the provisions of Section 85 relating to the payment of wages and salaries semi-monthly shall become inoperative as to employees referred to in said ordinance. [*New section, 1963*]

Limitation on Incurrence of Liabilities

SECTION 86. No ordinance or resolution for the expenditure of money, except the annual appropriation ordinance, shall be passed by the board of supervisors unless the controller first certify to such board that there is a sufficient unencumbered balance in a fund that may legally be used for such proposed expenditure, and that, in the judgment of the controller, revenues as anticipated in

the appropriation ordinance for such fiscal year and properly applicable to meet such proposed expenditure will be available in the treasury in sufficient amount to meet the same as it becomes due.

No obligation involving the expenditure of money shall be incurred or authorized by any officer, employee, board or commission of the city and county unless the controller first certify that there is a valid appropriation from which the expenditure may be made, and that sufficient unencumbered funds are available in the treasury to the credit of such appropriation to pay the amount of such expenditure when it becomes due and payable.

Every officer who shall approve, allow or pay any demand on the treasury not authorized by law, ordinance or this charter, shall be liable to the city and county individually and on his official bond for the amount of the demand so illegally approved, allowed or paid.

Each such certification shall be immediately recorded by the controller. Each sum so recorded shall be an encumbrance for the purpose certified until such obligation is fulfilled, cancelled or discharged, or until the ordinance or resolution is repealed by the board of supervisors.

All obligations incurred, all ordinances passed, and resolutions and orders adopted, contrary to the provision of this section, shall be void and any claim or demand against the city and county based thereon shall be invalid.

While this section, in imposing liability on public officers for demands illegally approved, allowed or paid, may be paramount to state law as to municipal affairs, it is not paramount as to matters of state concern. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

This section is invalid insofar as it attempts (if it does attempt) to impose absolute liability on the district attorney for erroneous discretionary acts performed in good faith within the scope of his authority without malice, corruption or sinister motives. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

In determining the question of the personal liability of the controller for the allowance, and the treasurer for the payment, of salary claims illegally approved by an appointing officer, §§ 150 and 73 must be read with this section. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

In allowing and paying salary claims, the controller and the treasurer are not required under this section, when read with §§ 150 and 73, to pass upon the legality of the claimant's appointment; they are simply required to see to it that payments are not made unless they comply with procedure set up in the charter; they are not required to go beyond the certifications of the department head and the secretary of the commission as to the legality of the appointment. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

Notwithstanding the clause of this section requiring certification as to a sufficient unencumbered balance to meet proposed expenditures, the board of supervisors has broad powers as a law making body to contract on behalf of the city. To promise the payment of money upon performance of the contract out of an unencumbered and unexpended fund set aside for such expenditure is not to contract a liability in violation of the charter. **San Francisco v. Boyd** (1941) 17 Cal. (2d) 606, 110 Pac. (2d) 1036.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **Williams Bros. & Haas v. San Francisco** (1942) 53 Cal. App. (2d) 415; 128 Pac. (2d) 56; **San Francisco v. Ross** (1955) 44 Adv. Cal. 51, 279 Pac. (2d) 529.

Limitation on Claims and Damages

SECTION 87. All claims for money or damages against the city and county must be filed in accordance with the general law of the State of California applicable to the filing of claims against local public entities; otherwise no suit for money or damages may be brought against the city and county.

All claims heretofore presented within the time prescribed by the general law of the State of California and which substantially complied therewith at the time of their presentation shall be deemed to have been properly presented.

This section applies only to claims relating to causes of action arising subsequent to the effective date of Chapter 1724, California Legislature, 1959 Regular Session.

Except as otherwise provided for in other sections of the charter, the board of supervisors, by ordinance, shall prescribe the method whereby claims or litigation, or proceedings, based thereon, may be settled, compromised, adjusted or dismissed. [*Amended, 1935, 1960*]

Digest of decisions rendered under Section 87 prior to amendment of 1960:

Since only substantial compliance with this section is required, a claim erroneously stating that an accident occurred at one place when in fact it had occurred at another, and claimant so testified upon trial, was sufficient in view of claimant's good faith in attempting to comply with the law and since the mistake was not unreasonable. **Parodi v. San Francisco** (1958) 160 Cal. App. (2d) 577, 325 Pac. (2d) 224.

The requirement under this section that claims for damages against the city must be presented to the controller within 60 days after the occurrence does not apply to a claim based upon alleged violation of an agreement under which plaintiff deposited money with the city which he later sued to recover. **Bertone v. San Francisco** (1952) 111 Cal. App. (2d) 579, 245 Pac. (2d) 29.

Where the verification required by this section is proper on its face and is sufficient to support any charge of perjury in case of a false statement in a claim, it is not error to refuse the municipality permission to present evidence showing that the claim has not been properly verified. **Germ v. San Francisco** (1950) 99 Cal. App. (2d) 404, 222 Pac. (2d) 122.

In an action for personal injuries against a municipality, the injured party is not limited to the amount of the claim filed in accordance with this section, since such claims must be filed often before the extent of the injury is known and to limit recovery would induce the filing of excessive claims and tend to defeat the purpose of the claim provision. **Sullivan v. San Francisco** (1950) 95 Cal. App. (2d) 745, 214 Pac. (2d) 82.

A claim for injuries filed with the controller in accordance with this section by a street car passenger cannot be sustained as a timely filing of a county claim under Gov. Code §§ 29700-29705, since the operation of a street railway is not a county or government function, and since claims against counties must be filed with the board of supervisors. **Kornahrens v. San Francisco** (1948) 87 Cal. App. (2d) 196, 196 Pac. (2d) 140.

The provision of this section precluding recovery unless claims for damages be presented within 60 days after the occurrence applies to a claim for injuries to a passenger on a municipal street car. **Kornahrens v. San Francisco** (1948) 87 Cal. App. (2d) 196, 196 Pac. (2d) 140.

An action for personal injuries was not barred by failure to file claim against the city where the injury which was the basis of claimant's cause of action rendered him mentally incapable of filing the claim within the time required by this section and he filed it as soon as he regained the mental ability to do so. **Schuldstad v. San Francisco** (1946) 74 Cal. App. (2d) 105, 168 Pac. (2d) 68.

The time and place for filing of claims predicated on the liability under state law are matters of statewide concern, and the filing of a claim with the controller, as provided in this section, instead of the secretary or clerk of the legislative board, as provided in the statute is ineffective. **Wilkes v. San Francisco** (1941) 44 Cal. App. (2d) 393, 112 Pac. (2d) 759.

The writing of a letter by the injured party to the city and the city's action upon it does not estop the city from raising this section as a bar to action upon a claim. **Kline v. San Francisco Unified School Dist.** (1940) 40 Cal. App. (2d) 174, 104 Pac. (2d) 661.

The language of this section applies to all claims for damages against the city. **Cathey v. San Francisco** (1940) 37 Cal. App. (2d) 575, 99 Pac. (2d) 1109.

A statement of claim or demand as required by this section is a condition precedent to an action for damages and must be pleaded. **Cathey v. San Francisco** (1940) 37 Cal. App. (2d) 575, 99 Pac. (2d) 1109; **Kline v. San Francisco Unified School Dist.** (1940) 40 Cal. App. (2d) 174, 104 Pac. (2d) 661.

A complaint which fails to plead a demand made in accordance with the requirements of this section does not state a cause of action. **Crim v. San Francisco** (1907) 152 Cal. 279, 92 Pac. 640.

Cited in **San Francisco v. Transbay Construction Co.** (1943) 134 Fed. (2d) 468.

PURCHASING

Purchase and Sale of Material, Supplies and Equipment

SECTION 88. The purchaser of supplies shall purchase all materials, supplies and equipment of every kind and nature, and enter into agreements for all contractual services required by the several departments and offices of the city and county, except as in this section otherwise provided. Purchases of books, magazines and periodicals for the library departments, works of art for museums and other articles or things of unusual character as to the purchasing thereof, may, on the recommendation of a department head and the approval of the purchaser, be purchased directly by said department head.

Purchases for construction operations, or for any operations conducted outside the boundaries of the city and county may, on the recommendation of the department head in charge thereof and the approval of the purchaser of supplies, be made by the department head. All such purchases made by officials of departments other than the purchasing department shall be made in accordance with regulations established by the purchaser of supplies. The purchaser of supplies shall have authority to exchange used materials, supplies, and equipment to the advantage of the city and county, advertise for bids, and to sell personal property belonging to the city and county on the recommendation of a department head that such articles are unfit for use.

All purchases shall be by written purchase order or written contract. All purchases in excess of one thousand dollars (\$1,000) shall be by written contract, provided, however, that on the recommendation of the department head, in case of an emergency actually existing, the purchaser of supplies, with the approval of the chief administrative officer, may make such purchases in the open market on the basis of informal bids. At least three bids or quotations shall be secured on open market purchases and a permanent record of all such quotations shall be kept. All contracts and purchase orders in excess of two thousand dollars (\$2,000) for material, supplies or equipment shall require the signature of the chief administrative officer in addition to the signature of the purchaser of supplies. The purchaser of supplies shall not enter into any contract or issue any purchase order unless the controller

shall certify thereon that sufficient unencumbered balances are available in the proper fund to meet the payments under such purchase order or contract as these become due.

The purchaser of supplies shall establish specifications and tests to cover all recurring purchases of material, supplies and equipment. He shall, as far as is practicable, standardize materials, supplies and equipment according to the use to which they are to be put, when two or more types, brands or kinds are specified or requested by individual departments.

Purchases of equipment shall be made in accordance with specifications furnished by the department requiring such equipment in case the use of such equipment is peculiar to such department. For patented or proprietary articles sold by brand name, the purchaser may require each department requisitioning same by such brand name, to furnish specifications of the article requisitioned and may advertise for bids on the basis of such specifications, under conditions permitting manufacturers of or dealers in other articles made and sold for the same purpose to bid on such specifications or on the specifications of their own product. If the purchaser of supplies recommends the acceptance of the lowest or best bid, stating his reasons in writing therefor, and if the department head concerned recommends the acceptance of any other bid on such proprietary articles, stating his reasons in writing therefor, the award shall be determined by the controller.

The purchaser of supplies shall require departments to make adequate inspection of all purchases, and shall make such other inspection as he deems necessary. He shall direct the rejection of all articles which may be below standards, specifications or samples furnished. He shall not approve any bill or voucher for articles not in conformity with specifications, or which are at variance with any contract.

He shall have charge of central storerooms and warehouses of the city and county. He shall also have charge of a central garage and shop for the repair of city and county equipment. All garages and shops heretofore maintained by departments for the construction, maintenance, and repair of departmental supplies and equipment, and the personnel assigned thereto, excepting the shop and personnel for fire alarm, police telegraph and traffic signal manufacture and repair operated by the department of electricity, are hereby transferred to said central garage and shop.

He shall, under the supervision of the controller, maintain an inventory of all material, supplies and equipment purchased for and in use in all departments and offices of the city and county. He shall be responsible for the periodic check of such property, and in case of loss or damage deemed by him to be due to negligence, he shall report thereon to the mayor, the chief administrative officer and the controller. He shall have authority to require the transfer of surplus property in any department to stores or to other departments.

Purchaser of Supplies to Purchase Surplus Commodities

SECTION 88.1. Notwithstanding any other provision of the charter, the purchaser of supplies, with the approval of the chief administrative officer, may purchase any commodity either from the government of the United States or from the State of California without advertising for bids for said commodity, irrespective as to the cost thereof, and no written contract need be entered into with the government of the United States or with the State of California for the purchase of said commodity. Before any such purchase is made the controller shall certify as to the availability of funds to pay the purchase price of said commodity. [*New section, 1946*]

Purchasing Procedure by Ordinance

SECTION 88.2. The board of supervisors shall by ordinance determine the monetary limits of purchases of materials, supplies and equipment to be made (a) by the taking of informal bids consistent with the manner provided in Section 88; and (b) by advertising for bids consistent with the manner provided for in Section 95.

They shall also provide by ordinance for the monetary limits within which procurements of materials, supplies and equipment may be made from departmental revolving funds. The purchaser of supplies shall by rules and regulations, approved by the chief administrative officer and the controller, establish the methods whereby procurements may be made from departmental revolving funds. [*New section, 1962*]

Purchasing Procedure

SECTION 89. All purchase orders and contracts shall be based on written requisitions, or, for materials or supplies in common use in the various departments, on the purchaser's records of average use by all departments, when approved by the chief administrative officer. The purchaser of supplies shall approve all bills or vouchers for materials, supplies, equipment, and contractual services before the controller shall draw and approve warrants therefor. All contracts for the purchase of materials, supplies and equipment shall be made after inviting sealed bids by publication. All sealed bids received shall be kept on file. When an award of contract is made, notice that the same has been made shall be given by one publication, and any interested person may examine the bids and records at the purchaser's office.

Cited in **Dairy Belle Farms v. Brock** (1950) 97 Cal. App. (2d) 146, 217 Pac. (2d) 704.

Purchaser's Revolving Fund

SECTION 90. Appropriations for material, supplies, and equipment shall be segregated in each annual appropriation ordinance for each department or office. Any part of each such fund or appropriation may, on the recommendation of the purchaser of supplies and the approval of the controller, be transferred to or made available in the purchaser's revolving fund. Warrants shall be drawn against such fund by the controller on demand of the purchaser for the payment of bills on which discount for prompt payment may be secured, or for advantageous cash purchasing, under favorable or emergency market conditions, of materials or supplies for future departmental requisition and use. Discounts obtained by the use of the purchaser's revolving fund may be accumulated therein and the supervisors may make annual appropriations to such fund until a sufficient sum, as determined by the controller, is accumulated to meet the average purchasing and discount payment requirements of the city and county.

Purchase, Lease and Sale of Real Property and Improvements

SECTION 91. The director of property shall be the head of the department of property. He shall have charge of the purchase of real property and improvements required for all city and county

purposes, and the sale and lease of real property and improvements thereon owned by the city and county, except as otherwise provided by this charter. In the acquisition of property required for street opening, widening or other public improvements, the director of property shall make preliminary appraisals of the value of the property sought to be condemned or otherwise acquired, and report thereon to the responsible officer. It shall be his duty, in addition, to assist in such proceedings on the request of the responsible officer.

He shall have charge of the management of the exposition auditorium.

Each department authorized by the approval of bond issues or by annual or supplemental appropriation ordinances to purchase or lease property or improvements needed for the purposes of such department shall make such purchases or leases through the director of property. He shall make a preliminary valuation of the property to be acquired or leased and report the same to the

department requiring such property. For such purposes he may employ independent appraisers. He shall conduct negotiations with the owner or owners thereof, at the conclusion of which he shall report the terms on which such sale or lease may be concluded, together with his recommendations thereon. The head of the department concerned may report to the board of supervisors and recommend acceptance or that proceedings in eminent domain be instituted for the acquisition of such property.

It was held in **Lynch v. San Francisco**, Superior Court No. 15020, "That the defendant, . . . as Director of Property and Head of the Real Estate Department of the city and county of San Francisco and his respective successors in office are authorized by the present charter to fix rentals for the renting of said Exposition Auditorium upon such terms and conditions as he sees fit and without any ordinance, resolution or authorization by the defendant, Board of Supervisors, for that purpose." Judgment affirmed in **Lynch v. San Francisco** (1935) 3 Cal. (2d) 141, 43 Pac. (2d) 538.

Cited in **San Francisco v. Ross** (1955) 44 Cal. (2d) 52, 279 Pac. (2d) 529.

Sale of Property

SECTION 92. Any real property owned by the city and county, excepting lands for parks and squares, may be sold on the recommendation of the officer, board or commission in charge of the department responsible for the administration of such property. When the board of supervisors, by ordinance, may authorize such sale and determine that the public interest or necessity demands, or will not be inconvenienced by such sale, the director of property shall make a preliminary appraisal of the value of such property. The director of property shall advertise by publication the time and place of such proposed sale. He shall forthwith report to the department head concerned and to the supervisors the amount of any and all tenders received by him. The supervisors may authorize the acceptance of the highest and best tender, or they may, by ordinance, direct that such property be sold at public auction, date of which shall be fixed in the ordinance. No sale other than a sale at public auction shall be authorized by the supervisors unless the sum offered shall be at least ninety per cent of the preliminary appraisal of such property hereinbefore referred to.

The proceeds of the sale of any property under the control of a department shall be applied by the supervisors to the purchase of additional land for the use of such department if required there-

by. Otherwise such proceeds shall be applied to the purchase of additional real property for any city and county purpose, or, if not required therefor, may be appropriated by the board of supervisors for capital improvements; provided, however, that the proceeds of the sale of any property acquired for the use of any utility, bond, special or trust fund shall revert to the related utility, bond, special or trust fund.

The director of property may, in lieu of sale, arrange for the trading of any real property proposed to be sold for other property required by the department in charge thereof, on the recommendation of the officer, board or commission in charge of such property and the authorization, by ordinance, of the board of supervisors. [*Amended, 1951*]

Relocation of Produce and Related Food Processing Establishments

SECTION 92.1. Whenever the board of supervisors finds that it is necessary to relocate produce and related food processing establishments because of a redevelopment plan adopted pursuant to Community Redevelopment Law of California, as amended, and in order to promote, foster and encourage the intelligent and orderly marketing of such products through cooperation; to eliminate speculation and waste; to make the distribution of such products between producer and consumer as directly as can be feasibly done; and to establish a market for such products in the interest of the people of San Francisco, the board of supervisors by ordinance may authorize the purchase, lease or exchange of such real property within the City and County of San Francisco as may be deemed desirable for the establishment, maintenance, equipment, ownership and operation of a municipal market for such purposes, or the sale, exchange or lease of such real property to any person, firm or association for the establishment or maintenance of such a market. Notwithstanding any other provisions of this charter, sales, exchanges or leases not to exceed fifty years may be made or executed by negotiation after public notice and public hearing under such regulations and on such terms and conditions as may be deemed proper with or without bids, under ordinance enacted by a three-fourths vote of all members of the board of supervisors. [*New section, 1960*]

Lease of City Property

SECTION 93. When the head of any department in charge of real property shall report to the board of supervisors that certain land is not required for the purposes of the department, the board of supervisors, by ordinance, may authorize the lease of such property. The director of property shall arrange for such lease for a period not to exceed twenty years, to the highest responsible bidder at the highest monthly rent. The director of property shall collect rents due under such lease.

The public utilities commission shall have exclusive power to lease agricultural or other lands used and useful for water department purposes and at the same time available for leasing or rental for agricultural or other purposes and such leases shall be subject to administration by the operating forces of the water department.

The public utilities commission shall have exclusive power to lease lands now devoted to airport purposes or lands that may hereafter be acquired and devoted to airport purposes for a period not to exceed forty years, and the director of property shall arrange for such lease to the highest responsible bidder at the highest monthly or annual rent, subject to approval of the public utilities commission, and thereafter the administration of any and all such leases shall be by the public utilities commission. Section 123 of this charter shall not be applicable to leases referred to in this paragraph provided, however, that no lease of airport lands or agreement which divests the city and county of the right to manage, operate or control the aircraft landing field, the entire part of the airport not devoted to the aircraft landing field, or the entire airport shall be made without the approval of the board of supervisors by ordinance and referral and submission to a vote of the electors of the city and county at the election next ensuing not less than sixty days after the adoption of such ordinance, and such ordinance shall not go into effect until ratified by a majority of voters voting thereon. [*Amended, 1946; 1959*]

In arranging, under this section, for a lease to the highest bidder, the director may insert in the call for bids, for the protection of the city, a clause that the bid is subject to confirmation by the commission. *Laurent v. San Francisco* (1950) 99 Cal. App. (2d) 707, 222 Pac. (2d) 274.

§ 93-93.1-94

The provisions of this section constitute no restriction on the powers exercised by the city in an agreement and lease relating to an off-street parking facility. **Larsen v. City and County of San Francisco** (1957) 152 Cal. App. (2d) 355, 313 Pac. (2d) 959.

Cited in **San Francisco v. Ross** (1955) 44 Adv. Cal. 51, 279 Pac. (2d) 529.

SECTION 93.1. The board of supervisors shall have the power, by ordinance, subject to the referendum provisions of this charter, to provide a longer term for leases executed under section 93 of this charter than that provided for therein, providing, however, that until such ordinance shall become effective the limitations contained in section 93 as to the term of the lease shall control. [*New section, 1959*]

Records of Real Property

SECTION 94. The director of property shall maintain complete records and maps of all real property owned by the city, which shall show the purchase price, if known, and the department in charge of each parcel, with reference to deeds or grants establishing the city's title.

He shall annually report to the mayor, the controller, the chief administrative officer, and the supervisors the estimated value of each parcel and improvement. He shall make recommendations to the mayor and chief administrative officer relative to the advantageous use, disposition, or sale of real property not in use.

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CONTRACTS

Public Works and Purchasing Contracts

SECTION 95. The construction, reconstruction or repair of public buildings, streets, utilities or other public works or improvements, and the purchasing of supplies, materials and equipment, when the expenditure involved in each case shall exceed the sum of two thousand dollars (\$2,000) shall be done by contract, except as otherwise provided by this charter. It shall constitute official misconduct to split or divide any public work or improvement or purchase into two or more units for the purpose of evading the contract provisions of this section. In an emergency, provided an actual emergency be declared by the board of supervisors to exist, and when authorized by resolution of said board, any public work or improvement may be executed in the most expeditious manner. Notwithstanding any other provision in this section or this charter contained, upon the approval of the chief administrative officer declaring the work to be emergency in character, there may be expended by the department of public works the sum not to exceed five hundred dollars (\$500) for new construction of any type in or upon unimproved or unaccepted streets.

Any public work or improvement estimated to cost less than two thousand dollars (\$2,000) may be performed under contract or written order or by the employment of the necessary labor and purchase of the necessary materials and supplies directly by the city and county. Any public work or improvement executed by the city, other than routine repair work, shall be authorized by the chief administrative officer or by the heads or departments not under the chief administrative officer, only after detailed estimates have been prepared and submitted by the head of the department concerned. There shall be separate accounting for each work or improvement so executed, which accounting shall include all direct, indirect and supervisory elements of cost chargeable to such work or improvement, and each cost accounting shall be reported to the chief administrative officer, or to the mayor when such work shall have been performed by departments not under the chief administrative officer. All such accounts shall be reported to the controller. Any public work or improvement

costing less than two thousand dollars (\$2,000) and not performed by the use of city and county labor, materials, and supplies shall, if not performed under contract, be covered by written order or agreement which shall be based on not less than three bids, notice of which shall be given by three days' posting. Records of such bids shall be kept by the department.

When the expenditure for any public work or improvement shall exceed the sum of two thousand dollars (\$2,000), the same shall be done by contract, except as otherwise provided in this charter. The head of the department in charge of or responsible for the work for which a contract is to be let, or the purchaser of supplies in the case of purchases of materials, supplies and equipment, shall let such contract to the lowest reliable and responsible bidder not less than ten days after advertising by publication for two consecutive days for sealed proposals for the work, improvement or purchase contemplated. Each such advertisement shall contain the reservation of the right to reject any and all bids. The officer responsible for the awarding of any such contract shall require from all bidders information concerning their experience and financial qualifications, as provided by general law relative to such investigations authorized by departments of public works.

The purchaser of supplies with the approval of the chief administrative officer, or the department head concerned, with the approval of the board or commission to which he is responsible, may reject any and all bids and readvertise for bids.

The department head or the purchaser of supplies, as the case may be, shall have power to sign such contract for the estimated expenditures thereunder not in excess of two thousand dollars (\$2,000). Any contract involving the expenditure of over two thousand dollars (\$2,000), if for the purchase of materials, supplies or equipment, shall require the joint approval of the purchaser of supplies and the chief administrative officer. If such contract is for any public work or improvement, it shall require the joint approval of the department head and the chief administrative officer relative to departments under his jurisdiction, or the signature of the department head and the approval by resolution of the board or commission concerned for departments not under the chief administrative officer.

The board of supervisors, by ordinance, shall establish procedure whereby appropriate city and county departments may

file sealed bids for the execution of any work to be performed under contract. If such bid is the lowest, the contract shall be awarded to the department. Accurate unit costs shall be kept of all direct and indirect charges incurred by the department under any such contract, which unit costs shall be reported to and audited by the controller monthly and on the completion of the work.

In any case where the lowest gross price or unit cost bid is not accepted, and a contract is entered into with another bidder, written report shall be made to the chief administrative officer, the mayor and the controller by the officer authorized to execute the contract, with the reasons for failure to accept such lowest bid.

If any provision of this section is in conflict with any provision of section 88 of the charter, the provision contained in section 88 shall govern and control. [*Amended, 1947*]

The requirement of this section that contracts for construction of public works or improvements be let to the lowest bidder does not apply to a contract for expert services in the preparation of plans, specifications, estimates of costs and contract documents for a project. **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904.

The provisions of this section requiring that bids be received on contracts do not preclude a contract without bidding for services of a person highly skilled in his science or profession to make surveys, reports, etc., relative to traffic and transit conditions. **San Francisco v. Boyd** (1941) 17 Cal. (2d) 606, 110 Pac. (2d) 1036.

Where the formalities prescribed as prerequisites to the making of a contract for public improvement are not complied with, the law does not imply an obligation to pay for the work. **Zottman v. San Francisco** (1862) 20 Cal. 96, 81 Am. Dec. 96.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **Yosemite, etc., Corp. v. State Board of Equalization** (1943) 59 Cal. App. (2d) 39, 138 Pac. (2d) 39.

Progressive Payments

SECTION 96. Any contract may provide for progressive payments, if the advertisement for sealed proposals shall so specify. No progressive payments under any contract shall be made which, with prior payments, shall at any time exceed in amount ninety per cent of the value of the work and labor and materials furnished, and no contract shall authorize or permit the payment of more than ninety per cent of the total contract price before the completion of the work required by such contract and the acceptance thereof by the head of the department concerned.

Penalties and Extras

SECTION 97. If so specified in the published notice soliciting sealed bids for any public work or improvement, any contract therefor may be let for a gross price or on a basis of cost per unit of work to be performed, and may also provide for liquidated damages to the city and county for every day during which the contract is uncompleted beyond such specified date. In awarding any contract, the department head concerned is authorized to compare bids on the basis of time of completion. When any award of contract has been made in consideration, in whole or in part, of the relative time estimates of bidders for the completion of the work, the time within which the contractor shall start work shall be fixed and the performance within such time limits shall be covered by the bond required of the contractor, and no extension may be granted on such contract beyond the date specified for completion, unless the liquidated damages for each day the work is uncompleted beyond the specified date shall be collected; provided, however, that this shall not apply to unavoidable delays due to act of God.

If it becomes necessary, in the prosecution of any work or improvement under contract, to make alterations or modifications, or provide for extras in such contract which shall increase the contract cost, such alterations, modifications or extras shall be made only on the written recommendation of the department head responsible for the supervision of the contract, together with the approval of the chief administrative officer or the board or commission, as the case may be, and also the approval of the controller. No such alteration, modification or extra shall be valid, unless the increased price to be paid under the altered or modified contract shall have been agreed upon in writing and signed by the contractor and the department head concerned, and approved as hereinbefore provided. In the performance of any contract awarded on the unit and the unit-cost basis, if the department head concerned ascertains that the amount of work done or to be done shall exceed the estimated amount of the contract by ten per cent, or more, the excess shall be provided for as prescribed by section 80 relative to supplemental appropriations.

Contractors' Working Conditions

SECTION 98. Every contract for any public work or improvement to be performed at the expense of the city and county, or paid out of moneys deposited in the treasury, whether such work is to be done directly under contract awarded, or indirectly by or under sub-contract, sub-partnership, day labor, station work, piece work, or any other arrangement whatsoever, must provide: (1) That in the performance of the contract and all work thereunder, eight hours shall be the maximum hours of labor on any calendar day; (2) that any person performing labor thereunder shall be paid not less than the highest general prevailing rate of wages in private employment for similar work; (3) that any person performing labor in the execution of the contract shall be a citizen of the United States; (4) that all laborers employed in the execution of any contract within the limits of the city and county shall have been residents of the city and county for a period of one year immediately preceding the date of their engagements to perform labor thereunder; provided, however, that the officer empowered to award any such contract may, upon application of the contractor, waive such residence qualifications and issue a permit specifying the extent and terms of such waiver whenever the fact be established that the required number of laborers and mechanics possessing qualifications required by the work to be done cannot be engaged to perform labor thereunder.

The term "public work" or "improvement," as used in this section shall, include the fabrication, manufacturing or assembling of materials in any shop, plant, manufacturing establishment or other place of employment, when the said materials are of unique or special design, or are made according to plans and specifications for the particular work or improvement and any arrangement made for the manufacturing, fabrication or assembling of such materials shall be deemed to be a contract or a sub-contract subject to the provisions of this section.

The board of supervisors shall have full power and authority to enact all necessary ordinances to carry out the terms of this section and may by ordinance provide that any contract for any public work or improvement, or for the purchase of materials which are to be manufactured, fabricated or assembled for any public work or improvement, a preference in price not to exceed ten per cent shall be allowed in favor of such materials as are to

be manufactured, fabricated or assembled within the City and County of San Francisco as against similar materials which may be manufactured, fabricated or assembled outside thereof. When any such materials are to be fabricated, assembled or manufactured by any sub-contractor or materialman for the purpose of supplying the same to any contractor bidding on or performing any contract for any public work or improvement, said sub-contractor or materialman manufacturing, fabricating, assembling or furnishing said materials manufactured, assembled or fabricated within the City and County of San Francisco shall be entitled to the same preferential as would any original contractor or materialman furnishing the same if the board of supervisors by ordinance so provide. When any ordinance shall so provide any officer, board or commission letting any contract may in determining the lowest responsible bidder for the doing or performing of any public work or improvement add to said bid or sub-bid an amount sufficient not exceeding ten per cent in order to give preference to materials manufactured, fabricated or assembled within the City and County of San Francisco. [*Amended, 1935*]

The provision of former § 1 of ch. III of Art. II that every contract for work at the expense of the city and county must provide for maximum work hours and for rates of pay did not apply to a contract for furnishing certain supplies for use in the city departments. **Neal Publishing Co. v. Rolph** (1915) 169 Cal. 190, 146 Pac. 659.

The argument that a contract was for work and labor rather than a contract of purchase, is not pertinent in considering the application of this section, under which the question to be determined is whether the contract is one for public work. **Pacific Mfg. Co. v. Leavy** (1936) 14 Cal. App. (2d) 640, 58 Pac. (2d) 1292.

This section, as it stood in 1935, when it required "every contract for any public work or improvement exclusive of purchases" to contain certain provisions, did not apply to a subcontract to furnish mill work to be installed in a building, since such a subcontract was not one for the doing of any work for San Francisco, but for furnishing finished articles of merchandise. **Pacific Mfg. Co. v. Leavy** (1936) 14 Cal. App. (2d) 640, 58 Pac. (2d) 1292.

Contract Procedure by Ordinance

SECTION 99. The board of supervisors shall, by ordinance, establish the necessary procedure to be followed in the advertising for bids, the award of contracts, the supervision of contract work, and the acceptance thereof on completion; also for the security to be given on the filing of bids to guarantee the execution of the contract if awarded, and for the security to be given on the award

of contract for the faithful performance thereof and to guarantee the payment of wages for services engaged and of bills contracted for material, supplies and equipment used in the performance of the contract.

Collusion

SECTION 100. If any party or parties to whom a contract has been awarded has been guilty of collusion with any officer or representative of the city and county, or any other party or parties, in the submission of any bid or in preventing of any other being made, or in knowingly receiving preferential treatment by any officer or an employee of the city and county, then any contract so awarded, if not completed, may be declared null and void by the board of supervisors on the recommendation of the purchasing agent or the department head concerned, as the case may be, and the purchaser of supplies or the department head concerned shall thereupon re-advertise for bids for said work for the uncompleted portion thereof. If the work under such contract shall have been completed, the matter shall be referred to the city attorney for such action as may be necessary. Any party or parties guilty of such collusion shall not be permitted to participate in or to bid on any future public work, improvement or purchase to be made by the city and county.

BOND ISSUE PROCEDURE

General Laws Applicable

SECTION 101. The general laws of the State of California authorizing the incurring and establishing the procedure for the creation of bonded indebtedness and authorizing and establishing the procedure for the issuance of bonds to refund indebtedness of municipalities in force at the time any bonded indebtedness is created or refunded by the city and county shall, except as otherwise provided in this charter, be applicable to the creation of bonded indebtedness and the issuance of refunding bonds by the city and county.

This section which incorporates the general law on creation of bonded indebtedness of "municipalities, except as otherwise provided," does not prevent the creation of bonded indebtedness for county purposes as an exercise of powers appropriate to a county under § 2. *San Francisco v. Collins* (1932) 216 Cal. 187, 13 Pac. (2d) 912.

Interest on Bonds During Construction

SECTION 102. In any case where bonds have been authorized for the acquisition, construction or completion of a public utility or of extensions thereto, interest which may become due on said bonds during the actual period of construction of said utility, or of extensions to an existing utility, as the case may be, and during the period of six months immediately following the completion of the same may be paid out of the proceeds of sale of the bonds authorized and sold for such purpose, if such method of payment of interest be expressly provided for in the proceedings authorizing such bond issue.

Bonds for Street and Other Public Work—Revolving Fund

SECTION 103. A municipal indebtedness may be authorized to be incurred by the voters, in the manner now or hereafter provided by the general laws of the State of California, for the purpose of financing public improvements the cost of which is to be assessed against private property benefited thereby, and bonds may be authorized by the voters to be issued therefor, the proceeds of which shall be used as a "Revolving Fund" to be applied to the payment of incidental and other expenses, the progressive

payments on the work or works or to pay the principal or interest of bonds, securities or other evidences of debt issued against said special assessments or to purchase any bonds or coupons issued against such special assessments.

Bonded Debt Limit

SECTION 104. No bonded indebtedness shall be incurred by the city and county which together with the amount of bonded indebtedness outstanding shall exceed twelve per cent of the assessed value of all real and personal property in the city and county subject to taxation for city and county purposes; provided, however, that bonded indebtedness heretofore or hereafter created for water supply, storage or distribution purposes, bonded indebtedness created pursuant to section 103 hereof and bonded indebtedness heretofore created in aid of the Panama-Pacific International Exposition shall be exclusive of the limitation on the amount of bonded indebtedness of the city and county contained in this section.

Bond Election for the Acquisition of Public Utilities to Be Called by the Board of Supervisors Upon Petition of Electors

SECTION 105. In addition to the method prescribed by the other provisions of this charter, the proceedings for the authorization and issuance of bonds for the acquisition, construction or completion of any public utility or utilities may also be initiated by electors in the manner following: Whenever a petition, signed by qualified electors of the city and county equal in number to fifteen per cent of the electors who voted for all candidates for the office of mayor at the last general election at which a mayor of the city and county was elected, requesting the board of supervisors to submit to the electors of the city and county a proposition or propositions for incurring bonded indebtedness for the acquisition, construction or completion of any public utility or utilities shall be filed in the office in which initiative petitions are required by this charter to be filed, the board of supervisors shall, as soon thereafter as in its judgment shall be practicable, proceed to call an election and submit to the electors of the city and county the proposition or propositions of incurring bonded indebtedness of the city and county for the purpose or purposes set forth in

said petition. Neither errors nor informalities in said petition or in the signatures thereto nor the failure of the percentage of electors herein specified to sign the same, nor any delay in submitting said proposition or propositions to the electors shall invalidate any bonds which may be issued and sold pursuant to the provisions hereof. The provisions of this charter relating to the filing, verification and certification of initiative petitions shall be applicable to the petition herein referred to. Such election shall be called and held in the same manner as other bond elections of the city and county, and all proceedings for the issuance of bonds for the acquisition, construction or completion of such public utility or utilities, excepting only as otherwise provided in this section, shall be taken in accordance with the provisions hereinbefore set forth in this charter.

PUBLIC WORKS AND IMPROVEMENTS

Director of Public Works

SECTION 106. The department of public works shall be in charge of a director of public works, who shall be paid an annual salary of eight thousand dollars (\$8,000). He shall be appointed by and hold office at the pleasure of the chief administrative officer. The director of public works shall appoint a city engineer, who shall hold office at the pleasure of said director. He shall possess the same power in the city and county in making surveys, plats and certificates as is or may from time to time be given by law to city engineers and to county surveyors, and his official acts and all plats, surveys and certificates made by him shall have the same validity and be of the same force and effect as are or may be given by law to those of city engineers and county surveyors. [*Salary of director of public works now subject to Section 151.1*]

The director of public works shall have and succeed to the powers and duties of the board of public works from and after twelve o'clock noon on the 8th day of January, 1932, except as otherwise provided in this charter, at which time the terms of members of the board of public works shall terminate, and such board as theretofore existing shall be abolished.

All examinations, plans and estimates required by the supervisors in connection with any public improvements, exclusive of those to be made by the public utilities commission, shall be made by the director of public works, and he shall, when requested to do so, furnish information and data for the use of the supervisors.

A contract with a civil engineer for the purpose of making surveys and reports relative to traffic and transit conditions is not foreclosed by the clause in this section making it the duty of the director of public works to make all examinations, plans and estimates required by the supervisors in connection with public improvements. **San Francisco v. Boyd** (1941) 17 Cal. (2d) 606, 110 Pac. (2d) 1036.

The powers otherwise clearly vested in the director of public works are not limited by the provision of this section requiring him to make all examinations, plans and estimates required by the supervisors in connection with public improvements. **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904.

Cited in **Lynn v. Duckel** (1956) 46 Cal. (2d) 845, 299 Pac. (2d) 236.

General Law and Ordinance Procedure for Public Works

SECTION 107. Where a procedure for the exercising of any rights and powers belonging to a city, or a county, or a city and

county, relative to the establishment or change of grades and the lay-out, extension, opening, widening, changing, closing, vacating, paving, repaving or otherwise improving streets and highways and public places, and constructing sewers, drains, conduits and culverts, subways, tunnels, viaducts and bridges, or other public improvements incidental or appurtenant thereto, to planting trees, constructing parking and removing weeds or the executing of any other public work or improvement hereby or hereafter placed under the jurisdiction of the department of public works, and the payment of damages, or levying of special assessment to defray the whole or part of the cost of such works or improvements is provided by statute of the State of California, such procedure shall control and be followed, unless a different procedure is provided in or under authority of this charter or by ordinance continued by this charter or any such ordinance hereafter amended or by ordinance passed by the board of supervisors, and the board of supervisors is hereby empowered to provide by ordinance for any such purpose.

The department of public works shall semi-annually notify the tax collector of the amount of each assessment that becomes delinquent and the lot and block number against which such assessment is levied, and it shall be the duty of the tax collector to note such delinquency on each annual tax bill.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904.

Traffic Engineering

SECTION 107.1. The department of public works shall have powers and duties relating to street traffic, subject to the laws relating thereto, as follows: (a) to cooperate with and assist the police department in the promotion of traffic safety education; (b) to receive, study and give prompt attention to complaints relating to street design or traffic devices or the absence thereof; (c) to collect, compile, analyze and interpret traffic and parking data and to analyze and interpret traffic accident information; (d) to engage in traffic research and traffic planning; and (e) to cooperate for the best performance of these functions with any department and agency of the city and county and the state as may be necessary.

The department shall submit to the traffic bureau of the police

department, for its review and recommendation, all proposed plans relating to street traffic control devices; provided, however, that the bureau may waive submission and review of plans of particular devices designated by it. Failure of the said traffic bureau to submit to the department its recommendation on any proposed plan within fifteen (15) days after receipt shall be considered an automatic approval of said traffic bureau. The department shall not, with respect to any traffic control devices, implement such plan until the recommendation of the traffic bureau has been reviewed or until the fifteen (15) day period has elapsed. [*New section, 1959*]

Repair of Accepted Streets

SECTION 108. When any roadway of a street or portion thereof for not less than one continuous block has been paved in accordance with the specifications of the department of public works, and is in good condition, and sewer, gas and water pipes have been laid therein, the same shall be accepted by the supervisors by ordinance on the written certificate of the city engineer, and thereafter such portion of the roadway of said street shall be kept in repair and improved by the city and county. It shall be the duty of the owner of any property fronting on a public street to keep the sidewalk in front thereof in good repair and condition and the board of supervisors is hereby empowered to provide by ordinance for the repair of such sidewalks in all cases where the owner fails and neglects to repair the same.

Nothing herein contained shall relieve any railway company from making repairs to the roadway of any street in conformity with the terms of its franchise or as provided by law. [*Amended, 1935*]

Cited in *Edward Brown and Sons v. San Francisco* (1950) 36 Cal. (2d) 272, 223 Pac. (2d) 231.

Specified Types of Street Construction

SECTION 109. No patented pavement shall be ordered during the existence of the patent therefor, until the owner of such patent shall have transferred to the city and county all right to use of the same therein, with the privilege to any person to manufacture and lay same upon the streets under any contract that may be awarded to or entered into by him with the city and county.

Financing Special Assessment Projects

SECTION 110. The board of supervisors shall establish a public improvement revolving fund to which the board may make appropriations from tax levies thereto for the purpose of such fund, and may establish procedure for the use of the credit of the city and county for the establishment of said revolving fund, to be used solely for the purpose of financing all or part of the initial cost of public improvements to be paid in whole or in part from the proceeds of special assessments levied against the property deemed to be benefited. A bond issue or issues may be proposed, as authorized elsewhere in this charter, the proceeds of which shall be paid into said revolving fund for the financing of public improvements, provided that said revolving fund shall be reimbursed as prescribed in this section by the levy and collection of special assessments and that the interest and redemption or sinking fund charges on any bonds authorized for such purpose shall be paid from the proceeds of such levy.

On the recommendation of the director of public works and the chief administrative officer, sufficient bonds may be sold at one time to provide funds for the estimated cost of financing special assessment projects for a period of not to exceed one year. When any public improvement is to be financed in whole or in part from the proceeds of special assessments levied against the land deemed to be benefited, the director of public works, subject to the approval of the chief administrative officer, shall report to the controller the estimated cost of such improvement, the amount thereof to be levied by special assessment and the estimated amount of the appropriation to be made from the public improvement revolving fund to meet the initial cost of the project, including progressive payments and other direct or indirect costs chargeable to such project, and shall recommend the appropriation of the necessary sum from such revolving fund.

The supervisors, by ordinance, may provide for the amount to be added to the contract price and other costs of the work, as interest for the use of the revolving fund moneys in financing the cost of the improvement. Interest at the rate of not more than seven per cent may be charged on the unpaid balances of special assessments in cases where the owners of property against which

such assessments are levied elect to pay such assessments in installments.

The amount of all special assessments levied for the payment of work financed out of the public improvement revolving fund, together with all interest accruing thereon, shall be credited as collected to such revolving fund. The board of supervisors may prescribe the duties of any city and county officer or department in maintaining accounts of and collecting assessments for each such improvement.

Limitation on Special Assessments

SECTION 111. Special assessments shall not exceed fifty per cent of the assessed value of the land on which the special assessment is levied, except that when such assessments are authorized to be paid in installments over a period not to exceed ten years, no annual installment payment shall exceed twenty-five per cent of the assessed value of the land on which the special assessment is levied.

Sewer, Water and Other Connections

SECTION 112. The director of public works shall have authority, in the manner provided by ordinance by the board of supervisors, (1) to order the laying of sewer, water, gas and other mains, conduits or connections, whenever, in view of contemplated street improvements or as a sanitary regulation, such construction is recommended by the city engineer, and (2) to order that excavations, fences, embankments or grades on private property in a condition deemed by him as endangering the persons or property of those using the abutting streets, shall be put in such condition as to insure the safety of the public.

Liability for Damages by Reason of Defective Sidewalks, etc.

SECTION 113. If any portion of any sidewalk or street in the city and county which has been accepted as provided by law shall be in such defective condition as to endanger persons or property and through the official negligence of the director of public works, such defect remains unremedied, unrepaired or unbarricaded, and in consequence thereof damage or loss to person or property is sustained or suffered, the said director shall be liable to the party injured for the damage sustained; provided that a notice in writ-

ing directing attention to the existence of such defect, and specifying the particular street and block thereof whereon or wherein such defect exists shall have been served upon such director at least five days before such damage shall have been sustained; and provided further, that there are at such times funds available to the said director for repairing or remedying such defects or barricading the same.

Spur Tracks

SECTION 114. The board of supervisors shall refer all requests for spur track permits to the director of public works who shall grant such permits in all cases where the spur track is to be located within a heavy industrial zone, as classified by the city planning commission, provided that such spur track shall be so constructed and operated as not to establish an unreasonable interference with the public use of the streets affected. The board of supervisors shall refer all other requests for spur track permits to the director of public works for report thereon, which shall be submitted by him within ten days after such reference, and shall not grant permission to lay any spur track until a report thereon shall have been received from said director, to the effect that such construction and operation will not create an unreasonable interference with the public use of the streets affected.

CITY PLANNING

City Planning Department Established

SECTION 115. There is hereby established a department of city planning which shall consist of a planning commission, a director of planning and such employees as may be necessary to carry out the functions and duties of said department. The city planning commission shall consist of seven members, five of whom shall be appointed by the mayor. The chief administrative officer and the manager of utilities, or their designated deputies, shall be members *ex officio*.

TERMS OF MEMBERS

The terms of appointive members of the commission shall expire one each at twelve o'clock noon on the 15th day of January in the years 1949, 1950, and 1951, and two at said time in the year 1948. Thereafter, the term of each appointive member shall be four years. Present appointees shall continue in office without change of incumbency for the existing terms thereof. The mayor shall fill all vacancies in office of appointive members of the commission occurring either during or at the expiration of terms.

PRESENT COMMISSION CONTINUED

Neither the foregoing provision for addition of members to the commission, nor the addition thereof, nor any change herein provided in the powers and duties of the commission shall be deemed to affect the continuity of the existence of the commission as such or the status of any matter pending before it. All recorded actions of the commission shall remain in force and effect unless and until changed by ordinance or by other legal means.

COMPENSATION

Ex officio members of the commission shall serve as such without compensation. The compensation of appointive members of said commission shall be fifteen dollars (\$15) for each meeting of the commission actually attended by said members, provided that the aggregate amount paid all the members shall not exceed five thousand dollars (\$5,000) per year. [*Amended, 1948*]

Director of Planning

SECTION 116. The planning commission shall appoint a director of planning who shall hold office at its pleasure and who shall be a person of adequate technical training and administrative experience in city planning. The director of planning shall be the administrative head and appointing officer of the department of city planning. The position of director of planning shall not be subject to any provisions of this charter prescribing a residence qualification for officers or appointees, provided, however, that during his incumbency the appointee to the position shall reside in the city and county. The commission may also appoint a secretary, which appointment shall not be subject to the civil service provisions of this charter. Subject to the provisions of section 86 of this charter, the commission may also contract with architects, city planners, engineers, or other consultants for such services as it may require.

THE MASTER PLAN

It shall be the function and duty of the commission to adopt and maintain, including necessary changes therein, a comprehensive, long-term, general plan for the improvement and future development of the city and county, to be known as the master plan. The master plan shall include maps, plans, charts, exhibits, and descriptive, interpretive, and analytical matter, based on physical, social, economic, and financial data, which together present a broad and general guide and pattern constituting the recommendations of the commission for the coordinated and harmonious development, in accordance with present and future needs, of the city and county and of any land outside the boundaries thereof which in the opinion of the commission bears a relation thereto.

SCOPE OF THE MASTER PLAN

The master plan shall show the general location, character, and extent of existing and proposed street railway, bus, railroad, air, water, and other transportation routes and terminals, public ways, grounds, and open spaces, and the general location of major buildings, structures, and facilities constructed thereon or proposed, and shall include a land-use plan showing the proposed general distribution and the general location and extent of housing, business, industry, recreation, education, and other categories

of public and private uses of land, and recommended standards of population density and building intensity, with estimates of population growth and a general description of the amount and general classes of industrial, business and other economic activities for which the commission deems that space should be supplied within the territory covered by the plan, all correlated with the land-use plan. It shall include proposals for the acquisition, extension, widening, narrowing, removal, relocation, vacation, abandonment, sale, or change in the use of any of the foregoing public ways, routes, grounds, open spaces, buildings, or structures.

PREPARATION OF THE MASTER PLAN

In the preparation of the master plan or any amendment thereto, the department of city planning is authorized to make or cause to be made such investigations, studies, maps, charts, exhibits, and reports as it may deem to be required.

PROCEDURE FOR AMENDMENT

The master plan may be amended to include at any time modifications and extensions thereof. Before the commission may adopt any substantial extensions of the master plan adopted prior to the passage of this amendment or any substantial amendment or addition thereto which in the judgment of the commission constitutes a major alteration in the plan, it shall hold at least one public hearing thereon, notice of the time and place of which shall be given by at least one publication in the official newspaper of the city and county not less than twenty days before the day of hearing. Adoption of the master plan or portions thereof or amendments, extensions or additions thereto shall be by resolution carried by the affirmative votes of not less than a majority of all the members of the commission. Such resolutions shall refer expressly to the reports, plans, or descriptive and other matter intended to form the whole or part of the plan, and the action taken shall be recorded on such documents and an attested copy thereof shall be certified to the mayor and the board of supervisors.

ADDITIONAL POWERS AND DUTIES

The department of city planning may make such reports and recommendations to the mayor, the board of supervisors, and

§ 116-116.1

other officers and agencies as it may deem necessary to secure understanding and a systematic effectuation of the recommendations of the master plan. The department shall have the power to promote public interest in and understanding of the master plan and may publish and distribute copies of the plan or any portion thereof or of any report and may employ such other means of publicity and education as it may deem to be in the public interest.

The department shall act in an advisory capacity to the board of supervisors and other departments, commissions and agencies of the city and county in any matter affecting the physical improvement and development of the city and county. All public officials shall upon request furnish to the department of city planning such information as it may require for its work and the department of city planning shall furnish to all departments and officials of the city and county such information as said departments and officials may require concerning the master plan. In general, the department shall have such powers as may be necessary to enable it to fulfill its functions.

CAPITAL IMPROVEMENT PROGRAM

The department of city planning shall be governed by the provisions of section 69.1 of this charter pertaining to capital improvement projects. [*Amended, 1948*]

Legal Effect—Referral

SECTION 116.1. No ordinance or resolution which deals with the acquisition, extension, widening, narrowing, removal, relocation, vacation, abandonment, sale, or change in the use of any public way, transportation route, ground, open space, building, or structure, the subject matter of which has not been previously reported on by the department of city planning in accordance with the provisions of sections 69, 69.1, 72 or 116.1 of this charter, shall be adopted by the board of supervisors unless and until such ordinance or resolution shall have first been referred to the department of city planning and a report rendered thereon regarding conformity of the matter involved to the master plan. If conformity does not exist the report shall give the particulars of the difference between the proposal and the master plan.

It shall be the duty of the department of city planning to

render its report in writing upon any ordinance or resolution to the board of supervisors and to the controller within thirty days after the date of such referral unless a longer period is granted by the board of supervisors. Failure of the department of city planning to render any such report in such time shall be deemed equivalent to a report. [*New section, 1948*]

Zoning—Present Provisions to Apply Pending Ordinance Revision

SECTION 117. Until such time as the board of supervisors shall have enacted a new comprehensive zoning ordinance for the city and county based on a land use plan and providing for variances, and until the effective date of such ordinance, this section of the charter shall continue in force, and until such time, sections 117.1, 117.2, and 117.3, shall be inoperative. Upon the enactment and effective date of such an ordinance this section of the charter shall become inoperative for any purpose, and sections 117.1, 117.2, and 117.3, shall become operative.

ZONE CHANGES

The city planning commission, from time to time, shall consider and hold hearings on proposed changes in the classification of the use to which property in the city and county may be put, and the establishment or changing of building set-back lines, in either case, on its own motion or on the application of an interested property owner.

HEARINGS, ETC.

The board of supervisors, by ordinance, shall establish procedure for action on such matters, which ordinance must provide, among other things, that the commission shall give notice of time, place and date of hearing by posting throughout the area and by publication not less than twenty days prior thereto; that the commission shall notify, in writing, not less than ten days prior to said hearing, applicants for proposed changes, and all persons whose names and addresses are shown on the assessment roll as owners of property within three hundred feet of all exterior boundaries of the area affected by the proposed changes of the time and place of hearing, which names, addresses, and other information shall be furnished by the applicant in the form required by the commission; that the commission, after hearing shall, by resolution, approve or disapprove the proposed change which, if approved, shall not become effective for thirty days;

that appeal may be taken from the ruling of the commission by filing written protest with the board of supervisors, and if such protest is subscribed by the owners of twenty per cent of the property affected, the supervisors shall fix a time and a place for hearing such objections which shall be not less than ten nor more than thirty days after such filing, and must decide thereon within ten days of the start of such hearing, provided that, if the full membership of the board is not present on the last day on which said objections are set or continued for hearing within said period, the board may postpone said hearing and decision thereon until, but not later than, the full membership of the board is present; provided, further, that the latest date to which said hearing and decision may be postponed on such account shall not be more than ninety (90) days from the date of filing of such protest; that the supervisors, by not less than two-thirds vote, may disapprove the action of the commission, provided, however, that any change in zoning, classification or building set-back lines made by the commission on its own motion shall require approval of the supervisors by a two-thirds vote; that in case of disapproval by the commission or by the supervisors on appeal of a proposed change, such proposed change may not be resubmitted to or reconsidered by the commission for at least one year.

In determining whether an appeal to the board of supervisors from a decision of the planning commission contains the requisite 20 per cent of signatures of owners of property affected as in this section provided, the board of supervisors shall have the power to exclude property owned by the City and County of San Francisco and by the state and federal governments, and any agency thereof, in making such computation.

LEGISLATIVE REFERRAL

No ordinance shall be considered by the supervisors, the purpose or intent of which is the classification, regulation or control of the height, area, bulk, location or use of any building or buildings, or premise or premises, and classifying any property into any district or zone for such purposes, or establishing a set-back line or lines along any street or portion thereof in the city and county without being first submitted to the city planning commission for report and recommendation. If the commission disapproves any such ordinance, the supervisors may adopt the same only by an affirmative vote of at least two-thirds of its

entire membership. The failure of the commission to act within sixty days from and after the date of official submission of any proposed zoning classification or set-back line by the board of supervisors shall be deemed to be approval of such classification or proposed set-back line by the commission. [*Amended, 1948; 1952; 1958*]

The board of supervisors in establishing a procedure as directed by this section cannot deprive a property owner of a right given by the charter. **Marculescu v. City Planning Commission** (1935) 7 Cal. App. (2d) 371, 46 Pac. (2d) 308.

It is presumed that the words "an interested person," as used in this section, were used in the same sense in which they were by prior decisions deemed to have been used in various statutes. **Marculescu v. City Planning Commission** (1935) 7 Cal. App. (2d) 371, 46 Pac. (2d) 308.

An adjacent property owner is interested in the use to which his neighbor may legally put his property and is, therefore, an interested property owner within this section. **Marculescu v. City Planning Commission** (1935) 7 Cal. App. (2d) 371, 46 Pac. (2d) 308.

An ordinance providing that a petition for rezoning shall be signed and verified by "the owner of the property" is invalid as an attempted limitation on this section which authorizes such an application by "an interested property owner. **Marculescu v. City Planning Commission** (1935) 7 Cal. App. (2d) 371, 46 Pac. (2d) 308.

New Provisions for Zone Changes

SECTION 117.1. The city planning commission shall consider and hold hearings on proposed changes in the zoning ordinance which classifies the uses to which property in the city and county may be put, and on the establishment or changing of building set-back lines, either on its own motion, or on the application of interested property owners or their authorized agents. The board of supervisors, by ordinance, shall establish procedure for action on such matters. The city planning commission shall give notice of time and place of such hearings and shall act upon such applications for change within ninety days from the date of conclusion of the hearing. Failure to act within said time shall constitute disapproval. If approved, such applications, together with the approval of the commission, shall be presented to the board of supervisors, which may adopt such changes by a majority vote. If disapproved, the action of the city planning commission shall be final, except that appeal may be taken from the ruling of the commission by filing written protest with the board of supervisors within a period of thirty days after the action of the city planning commission, and if such protest is subscribed by the owners of twenty per cent of the property affected. The board of supervisors or the clerk thereof shall set a time and place for hearing such

§ 117.1-117.2-117.3

appeal, which shall be not less than ten nor more than thirty days after such filing. The board must decide such appeal within ten days of the time so set for such hearing, provided that, if the full membership of the board is not present on the last day on which said objections are set or continued for hearing within said period, the board may postpone said hearing and decision thereon until, but not later than, the full membership of the board is present, or the action of the commission shall be deemed to be approved by the board, provided, further, that the latest date to which said hearing and decision may be postponed on such account shall not be more than ninety (90) days from the date of filing of such protest. The supervisors may disapprove the action of the commission on such appeal by a vote of not less than two-thirds of all members of the board and adopt such change in said ordinance. Any action of the commission so appealed shall not become effective unless and until approved by the board within the time aforesaid. In case of disapproval by the commission or by the supervisors on appeal of a proposed change, such proposed change may not be resubmitted to or reconsidered by the commission for at least one year. [*New section, 1948; amended, 1952*]

New Provisions for Zoning Administration

SECTION 117.2. There shall be in the department of city planning a zoning administrator appointed subject to the civil service provisions of this charter who shall administer and enforce the zoning and set-back ordinances. He shall receive and investigate all applications for proposed amendments thereto and shall submit his report and recommendations thereon to the director of planning prior to the hearing by the commission thereon. [*New section, 1948*]

Variances

SECTION 117.3. The zoning administrator shall receive investigate, hear and determine all applications for variances from the strict application of the provisions of the aforesaid ordinances. The board of supervisors shall establish by ordinance the procedure for action on such matters, including the manner by which notice of time and place of hearings shall be given. The zoning administrator shall have power to grant only such variances as may be in harmony with the general purpose and intent of said ordinances and in accordance with the general and specific rules therein contained, subject to such conditions and safeguards as

he may impose. He shall have authority to grant such variances only when the strict and literal interpretation and enforcement of the provisions of said ordinances would result in practical difficulties, unnecessary hardships or results inconsistent with the general purposes of the zoning regulations. Before any such variance may be granted, there shall appear, and the zoning administrator shall specify in his findings, the facts in each case which shall establish:

(1) That there are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use of the property that do not apply generally to the property or class of uses in the same district or zone;

(2) That such variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner, possessed by other property in the same zone and vicinity; and

(3) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such zone or district in which the property is located.

VARIANCE APPEALS

The determination of the zoning administrator shall be final except that appeals therefrom may be taken, as hereinafter provided, to the board of permit appeals, exclusively and notwithstanding any other provision of this charter, by any person aggrieved or by any officer, board, or commission of the city and county. An appeal from a determination of the zoning administrator shall be filed within ten days from the date of such determination with the board of permit appeals. Upon making a ruling or determination upon any matter under his jurisdiction, the zoning administrator shall thereupon furnish a copy thereof to the applicant and to the director of planning. No variance granted by the zoning administrator shall become effective until ten days thereafter. An appeal shall stay all proceedings in furtherance of the action appealed from.

BOARD OF PERMIT APPEALS—POWER TO ACT ON VARIANCES

The board of permit appeals shall have and exercise the following powers:

(a) To hear and determine appeals where it is alleged there is error or abuse of discretion in any order, requirement, decision or determination made by the zoning administrator in the enforcement of the provisions of any ordinance adopted by the board of supervisors creating zoning districts or regulating the use of property in the city and county;

(b) To hear and determine appeals from the rulings, decisions and determinations of the zoning administrator granting or denying applications for variances from any rule, regulation, restriction or requirement of the zoning or set-back ordinances, or any section thereof. Upon the hearing of such appeals said board may affirm, change, or modify the ruling, decision or determination appealed from, or, in lieu thereof, make such other additional determination as it shall deem proper in the premises, subject to the same limitations as are placed upon the zoning administrator by this charter or by ordinance. [*New section, 1948*]

Subdivisions

SECTION 118. All plats or replats of subdivisions of land laid out in building lots, and the project plans for public and private housing, slum clearance and the rehabilitation and redevelopment of blighted areas, including the streets, alleys or other lands intended to be dedicated to public use or for the use of lessees, purchasers, or owners of lots fronting thereon or adjacent thereto, and located within the city and county limits, shall be submitted in tentative form to the department of city planning and the city planning commission shall report its recommendations thereon in writing to the agency responsible therefor, as provided by ordinance. Should major changes occur after acceptance of the tentative map, the final plat shall be submitted for further report thereon to the department of city planning. [*Amended, 1948*]

PUBLIC UTILITIES AND FRANCHISES

Public Utility Policy

SECTION 119. It is the declared purpose and intention of the people of the city and county, when public interest and necessity demand, that public utilities shall be gradually acquired and ultimately owned by the city and county. Whenever the board of supervisors, as provided in sections 101 to 104, inclusive, of this charter, shall determine that the public interest or necessity demands the acquisition, construction or completion of any public utility or utilities by the city and county, or whenever the electors shall petition the supervisors, as provided in sections 105, 179 and 180 of this charter, for the acquisition of any public utility or utilities, the supervisors must procure a report from the public utilities commission thereon.

The city is committed by this provision of the charter to a general policy of public ownership of all public utilities. **San Francisco v. United States** (1939) 106 Fed. (2d) 569.

Extension of Municipal Railway by Unification with Market Street Railway

SECTION 119.1. 1. The City and County of San Francisco shall have power and is hereby authorized, in addition to all other powers howsoever conferred upon said city and county, to extend the existing San Francisco municipal railway by the acquisition of the operative properties of Market Street Railway Company, hereinafter called "said operative properties," and to acquire said operative properties, thereby supplying said city and county and the inhabitants thereof with a unified street railway system and incidentally furnishing transportation in and to San Mateo County.

2. The adoption of this section shall be deemed to and shall constitute a finding by the people of the City and County of San Francisco that the public interest and necessity demand the extension of the existing municipal railway by the acquisition of said operative properties, thereby providing a unified municipal railway system for the benefit of said city and county and its inhabitants.

3. Upon the payment in full of the cost of said operative

properties, as herein provided, said operative properties shall be consolidated with the present municipal railway and shall become a part thereof and both of said systems so consolidated, and all additions, betterments and improvements thereto, shall constitute the municipal railway of the City and County of San Francisco, and shall be subject to all the provisions of this charter then in effect. Prior to the payment in full, as herein provided, of the cost of said operative properties the same shall be operated by the public utilities commission, hereinafter called "commission," and the provisions of sections 74, 127, 128, 128.1, 129 and 130 of this charter shall not be applicable to said operative properties, the operation thereof, or the revenues derived therefrom, nor shall any other provision of this charter, inconsistent with the provisions of this section 119.1, be applicable; provided, however, that said commission shall nevertheless manage, control and operate said properties as an extension of the municipal railway with uniform fares and transfer privileges so as to constitute a unified street railway system.

Prior to the acquisition of said operative properties, the commission shall submit, and the mayor shall approve and the board of supervisors shall adopt, a budget relating to such unified operation in the same manner and subject to the same conditions except time as provided in the charter and in this section 119.1, for the submission and approval of the annual budget, the annual appropriation ordinance and the annual salary ordinance. Provided that such budget and ordinances shall become effective upon such acquisition.

For the purpose of accounting for the revenues derived from the operation of said operative properties prior to the payment in full of the cost thereof, 57% of the gross revenues of the municipal railway and said operative properties shall be deemed to be and shall constitute the revenues applicable to and derived from the operation of said operative properties, and said revenues shall be set aside by the controller in a special fund, which is hereby created, to be designated "Municipal Railway-Market Street Extension Fund," hereinafter called "extension fund" and shall be held separate and apart from all other moneys in the treasury.

Out of the moneys estimated to be received in said extension fund there shall be appropriated by the board of supervisors the

amounts recommended by the commission for the following purposes and in the following order:

(a) The operating expenses of said operative properties, including pension charges and proportionate payments to such compensation and other insurance and accident reserve funds as the commission may establish or the board of supervisors may require in connection with said operative properties. The aggregate amount provided from said extension fund for such requirements in any year shall be 55.96% of the annual cost of all the operating expenses and above described charges and payments made on account of both the existing municipal railway and said operative properties then operated as a unified system;

(b) All amounts provided for repairs and maintenance of said operative properties. The aggregate amount provided from said extension fund for such requirements in any year shall be 56.49% of the annual cost of repairs and maintenance of both the existing municipal railway and said operative properties, then operated as a unified system;

(c) Amounts determined by the commission to be necessary to create and maintain a reconstruction and replacement fund applicable to said operative properties, not exceeding for the first year after such acquisition \$500,000, and not less than \$300,000, and in subsequent years, until the purchase price shall have been paid in full, a sum not exceeding \$750,000 for the first year and not less than \$500,000 per annum thereafter. Any unencumbered balance remaining in said reconstruction and replacement fund at the close of each fiscal year shall become a part of the moneys to be paid to the Market Street Railway Company pursuant to sub-paragraph (d) hereof;

(d) The entire balance remaining in the extension fund which shall be paid to Market Street Railway Company as required by the terms of the purchase contract, but in any event not later than thirty days after the close of the fiscal year of the city and county. It is hereby found and determined that the ratios herein established for gross revenues, operating expenses and other charges, and repairs and maintenance of the municipal railway and said operative properties represent the exact ratios prevailing between said systems based on a study and report of the commission which is hereby approved and adopted.

§ 119.1

4. All amounts herein required to be paid from the extension fund shall be paid by the treasurer of the city and county upon presentation of a controller's warrant drawn at the demand of the commission. It is hereby made the duty of the commission to make such demand in accordance with the terms of the purchase contract and for the purposes herein provided.

All moneys paid to Market Street Railway Company shall be applied first to the payment of interest on the purchase price and the balance to the unpaid principal of said purchase price. None of the moneys in said trust fund shall be diverted to any other purpose or used or applied for any other city and county purposes or transferred to any other fund.

5. The provisions of this section 119.1 shall prevail over any other provision of this charter or general law, and the method herein provided for the extension of the existing municipal railway by acquisition of said operative properties shall be deemed to constitute an additional method of providing for such extension by the acquisition of said operative properties and for the payment of the cost thereof.

Whenever the commission, with the advice and approval of the mayor, shall agree with the Market Street Railway Company upon the terms and conditions of such acquisition of said operative properties, it shall be the duty of the commission and the mayor to execute such contract for and on behalf of the City and County of San Francisco and in its name. Subject only to the provisions of this section 119.1, such contract may provide, among other things:

(a) That the maximum purchase price shall be \$7,500,000, whereof \$2,000,000 shall be paid forthwith from surplus in any of the funds of the existing municipal railway derived from earnings of the existing municipal railway, which surplus is hereby determined to exist and to be available for, and is hereby appropriated for, said purpose, and the city and county shall be obligated solely to pay the balance of said purchase price exclusively from the moneys in said extension fund, as herein provided. The unpaid balance of said purchase price shall bear interest at the rate of not to exceed four (4) per cent per annum, payable annually.

It is hereby found and determined that after making said

initial payment herein provided to be made to Market Street Railway Company there will remain in the funds of the municipal railway moneys fully sufficient to pay and discharge all current obligations of the bonds issued by the city and county for the acquisition, construction and completion of said municipal railway and all other costs and charges now payable from said funds;

(b) That the title to said operative properties shall be transferred to the city and county upon payment of said \$2,000,000 and the execution of proper instruments of conveyance and shall be good and merchantable title free and clear of all claims, liens and encumbrances of every kind and character, whether in favor of the Market Street Railway Company or in favor of any one other than Market Street Railway Company;

(c) That upon the delivery of such instruments of conveyance, Market Street Railway Company shall assign and transfer to the city and county all franchises, permits and licenses of any kind or character necessary or desirable in connection with the operation of said operative properties, and shall surrender and cancel its existing operating permit, whereupon all rights, privileges and obligations under said operating permit and all other permits and franchises granted by the city and county shall be terminated and cancelled;

(d) That uniform rates, fares and charges, and universal transfer privileges shall be established and maintained by the commission and that except for school children and other special cases pursuant to which reduced or free transportation now exists in accordance with the existing practice of the municipal railway, the regular fare for transportation of passengers on said unified street railway system shall not be less than 7 cents per passenger until the purchase price of said operative properties shall have been paid in full as herein provided; and provided, however, that said fares shall not be increased in excess of 7 cents per passenger except in accordance with the procedure of section 130 of the charter;

(e) That the City and County of San Francisco and all commissions, boards, officers and employees thereof shall comply with the terms and conditions of said contract and this section 119.1. Such contract may contain such other terms and conditions not inconsistent with the provisions of this section, as the commission

§ 119.1

may deem appropriate for the purpose of carrying out the objects and purposes of this section, including but without being limited to the agreement that the city and county will operate said operative properties and maintain the same in good running order, and otherwise utilize said operative properties in an efficient and economical manner in accordance with the established operating and business standards and practices of the street railway industry, subject only to breakdown and other causes beyond the control of the city and county; that the city and county will not make any extensions, radical changes or alterations to said operative properties or abandon any substantial portion thereof except only to the extent that such extensions or abandonments are required by reason of the unification of the operations of said operative properties with those of the municipal railway. The city and county, however, shall not be obligated to pay any of the costs or expenses provided to be paid under such contract from any source other than said extension fund.

6. Except for the sum of \$2,000,000 to be paid Market Street Railway Company as herein provided, the obligation of the city and county to pay the balance of said purchase price, interest thereon, all operating expenses, all other charges of any other kind or character incurred in connection with said operative properties shall be limited exclusively to moneys in said extension fund as herein provided and under no circumstances shall the payment of any part thereof constitute a debt, liability or obligation of the City and County of San Francisco, nor shall the city and county be obligated to pay any part thereof from any moneys derived from the levy or collection of taxes upon the taxable property of the City and County of San Francisco, provided that nothing herein or elsewhere in the charter contained shall prevent the city and county from paying any part of the balance of said purchase price and interest thereon or any other charges in connection with the operation or maintenance of said operative properties from any funds of the municipal railway appropriated by the board of supervisors for that purpose, which said funds the board of supervisors may in its discretion appropriate; and in the event of such appropriation the provisions of section 129 of the charter, insofar as the revenues of the municipal railway are concerned, shall be suspended until the cost of the acquisition of said operative properties is paid in full, and provided further

that under no circumstances shall the city and county make such payments from its general funds or from any funds other than as provided by this section 119.1.

7. The acquisition of said operative properties in the manner herein provided is hereby determined to be and shall constitute an extension and improvement of the existing municipal railway.

8. Until the purchase price of said operative properties shall have been paid in full, the commission is hereby authorized to fix, establish and collect uniform rates, charges and fares for the transportation of persons on both the municipal railway and the said operative properties, without regard to section 130 of the charter, except as herein provided, and provided that such rates, charges and fares shall not be less than those specified in this section 119.1. After the purchase price of said operative properties shall have been paid in full all rates, charges and fares for transportation service furnished by the then unified and extended municipal railway shall be fixed, established and collected only in accordance with the then existing provisions of the charter, without regard to this section 119.1. [*New section, 1944*]

Cited in **Kenney v. Wolff** (1948) 84 Cal. App. (2d) 592, 191 Pac. (2d) 88; **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

Payment of Balance Due Market Street Railway

SECTION 119.2. Notwithstanding anything contained in section 119.1 of the charter, or any other provision thereof, the City and County of San Francisco may fund, refinance and pay the entire balance due Market Street Railway Company for the cost of the acquisition of the operative properties of Market Street Railway Company out of current revenues or the proceeds of the sale of any bonds of the City and County of San Francisco which may be authorized for that purpose.

Bonds of the city and county issued to fund or refinance such unpaid balance due Market Street Railway Company may be issued substantially in the form and manner and under the procedure provided by law for the refunding of any outstanding bonded indebtedness of municipalities. [*New section, 1948*]

Operation of Cable Cars

SECTION 119.3. In the conduct of the municipal railway there shall be maintained and operated cable car lines as follows:

1. A line commencing at Powell and Market Streets; thence along Powell Street to Jackson Street; thence along Jackson Street to Mason Street; thence along Mason Street to Columbus Avenue; thence along Columbus Avenue to Taylor Street; thence along Taylor Street to a terminal at Bay Street; returning from Bay and Taylor Streets along Taylor Street to Columbus Avenue; thence along Columbus Avenue to Mason Street; thence along Mason Street to Washington Street; thence along Washington Street to Powell Street; and thence along Powell Street to Market Street, the point of commencement.

2. A line commencing at Powell and Market Streets; thence along Powell Street to Jackson Street; thence along Jackson Street to Hyde Street; thence along Hyde Street to a terminal at Beach, returning from Beach and Hyde Streets along Hyde Street to Washington Street; thence along Washington Street to Powell Street; thence along Powell Street to Market Street, the point of commencement.

3. A line commencing at Market and California; thence along California Street to a terminal at Van Ness Avenue; returning from Van Ness Avenue along California Street to Market Street, the point of commencement.

Notwithstanding the provisions of section 74 of the charter the board of supervisors shall have power, and it shall be its duty, to provide \$855,820 from any funds certified by the controller to be legally available for capital costs to accomplish the purpose of this section and it shall, for the fiscal year 1955-1956, levy a tax to provide any portion thereof not theretofore provided.

The amounts realized from the sale or disposition of that certain parcel of real property situate at the southwest corner of California and Hyde Streets shall be made available for capital costs for the purpose of this section, and shall be in addition to the amount specified in the preceding paragraph.

Proposed expenditures for capital costs in excess of the amounts hereinabove specifically provided for shall be subject to the provisions of section 74 of the charter. [*New section, 1948; amended, 1955*]

**Acquisition of Operative Properties of California Street
Railroad Company—Operation**

SECTION 119.4. The City and County of San Francisco shall have power and is hereby authorized, in addition to all other powers howsoever conferred upon said city and county, to extend the existing San Francisco municipal railway by the acquisition of the operative properties of the California Street Cable Railroad Company, and to acquire said operative properties.

In addition to all other operative properties of every kind and character, said operative properties shall include lot 1 of assessor's block 250, being the southwest corner of California and Hyde Streets, 219 feet 6 inches on California Street by 137 feet 6 inches on Hyde Street, and all of the right, title and interest of said company in lot 2 of assessor's block 25, located on the west side of Hyde Street, 46 feet south of Beach Street, 10 feet 6 inches on Hyde Street, by a depth of 23 feet.

The adoption of this section shall be deemed to and shall constitute a finding by the people of the City and County of San Francisco that the public interest and necessity demand the extension of the existing municipal railway by the acquisition of said operative properties, thereby providing a unified municipal railway system for the benefit of said city and county and its inhabitants.

Whenever the public utilities commission, with the advice and approval of the mayor and the board of supervisors, shall agree with the California Street Cable Railroad Company upon the terms and conditions of such acquisition of said operative properties, it shall be the duty of the commission and the mayor to execute such contract for and on behalf of the City and County of San Francisco and in its name. Such contract shall provide, among other things:

(a) That the maximum purchase price of said properties shall be \$150,000, the period of payment of which shall not exceed one year;

(b) That the title to said operative properties shall be transferred to the city and county upon execution of said agreement and the execution of proper instruments of conveyance and shall be good and merchantable title free and clear of all claims, judgments, liens and encumbrances of every kind and character,

whether in favor of the California Street Cable Railroad Company or in favor of any one other than the California Street Cable Railroad Company;

(c) That upon the delivery of such instruments of conveyance, California Street Cable Railroad Company shall assign and transfer to the city and county all franchises, permits and licenses of any kind or character necessary or desirable in connection with the operation of said operative properties, and shall surrender and cancel its existing operating permit, whereupon all rights, privileges and obligations under said operating permit and all other permits and franchises granted by the city and county shall be terminated and cancelled.

It shall be the duty of the board of supervisors, and it shall have power, to provide funds for the payment of said purchase price out of the general funds, or any other funds, which may legally be made available in accordance with the fiscal provisions of the charter.

Prior to the acquisition of said operative properties, the public utilities commission shall submit, and the mayor shall approve and the board of supervisors shall adopt, a budget relating to the operation of said properties in the same manner and subject to the same conditions except time as provided in the charter and in this section 119.4, for the submission and approval of the annual budget, the annual appropriation ordinance and the annual salary ordinance. Such budget and ordinance shall become effective upon such acquisition.

In the acquisition of said properties, the provisions of section 119 of this charter shall not be applicable; and the provisions of section 119.3 shall not be applicable in the operation thereof.
[*New section, 1949*]

Public Utilities Commission

SECTION 120. A public utilities commission is hereby created, which shall consist of five members, who shall be appointed by the mayor and who shall be subject to recall and to suspension and removal in the same manner as elective officers. The term of **each** commissioner shall be four years, provided that the five commissioners first appointed by the mayor after twelve o'clock noon, on the 8th day of January, 1932, shall, by lot, classify their

terms so that the term of one commissioner shall expire at twelve o'clock noon on the 15th day of January in each of the years 1933, 1934, and 1935, respectively, and that the terms of two other commissioners shall expire at twelve o'clock noon on the 15th day of January, 1936, and on the expiration of these and successive terms, the mayor shall appoint their successors for four years. The compensation of each commissioner shall be one hundred dollars (\$100) per month.

General Powers and Duties of Commission

SECTION 121. The public utilities commission shall have charge of the construction, management, supervision, maintenance, extension, operation and control of all public utilities and other properties used, owned, acquired, leased or constructed by the city and county, including airports, for the purpose of supplying any public utility service to the city and county and its inhabitants, to territory outside the limits of the city and county, and to the inhabitants thereof.

The commission shall locate and determine the character and type of all construction and additions, betterments and extensions to utilities under its control, and shall determine the policy for such construction or the making of such additions, betterments and extensions from the public funds under its jurisdiction; provided that in each such case it shall secure the recommendation of the manager of utilities, which shall be presented in writing and shall include analyses of cost, service and estimated revenues of all proposed or feasible alternatives in cases where it is deemed by the manager that such alternatives exist.

The commission shall also have power to enter into contract for the furnishing of heat, light and power for municipal purposes, and to supervise the performance and check the monthly bills under such contract.

The commission shall have full power and authority to enter into such arrangements and agreements as it shall deem proper for the joint use with any other person, firm or corporation owning or having jurisdiction over poles, conduits, towers, stations, aqueducts, reservoirs and tracks for the operation of any of the utilities under its jurisdiction. It may make such arrangements as it shall deem proper for the exchange of transfer privileges

with any privately owned transportation company or system which shall tend toward the betterment of transportation service.

The commission shall observe all city and county ordinances and the regulations of the department of public works relative to utility openings, structures and poles in streets and other public places, as well as all ordinances and regulations relative to barricades, construction lights, refilling excavations and replacing and maintaining street pavements; and in connection with all such matters the said commission shall be subject to the same inspection rules and pay fees to the proper department in the same manner and at the same rates as any private person or corporation.

The commission shall have charge of all valuation work relative or incidental to purchase proceedings initiated by the city and county for the acquisition of any public utility.

Foreign trade zones, as may be authorized by acts of Congress to be located in the city and county, are hereby declared to be public utilities within the meaning of this charter. A bonded indebtedness for the construction, completion or acquisition of foreign trade zones and the acquisition of necessary lands, buildings and equipment authorized by the electors in accordance with the provisions of this charter shall be exclusive of the bonded indebtedness of the city and county limited by this charter.

The powers and duties conferred by this section upon the public utilities commission authorize it to discontinue or abandon part of the city's transportation service and to do so without an ordinance to determine that the public interest or necessity demands such abandonment. **Mann v. San Francisco** (1934) 139 Cal. App. 652, 34 Pac. (2d) 817.

Although an employee's tenure may rest in the discretion of the public utilities commission and he can be discharged at any time under this section, it does not follow that the commission has authority to change his compensation. **Francis v. Leavy** (1933) 131 Cal. App. 619, 21 Pac. (2d) 979.

Corresponding provision (Art. XII) of former charter cited: **Hunt v. Boyle** (1928) 204 Cal. 151, 267 Pac. 97.

Utility Departments and Bureaus

SECTION 122. The San Francisco municipal railway, the San Francisco water department, the Hetch Hetchy project until the completion thereof when it shall be merged with the water department, or until any time prior to completion that the commission shall, with the approval of the board of supervisors by a two-thirds vote, declare the project merged with the water depart-

ment, the airport, and any other public utility hereafter acquired, shall each be designated as a department under the commission, and, in addition, the commission may create a bureau of engineering and such other bureaus as it may deem necessary for the handling of matters that do not pertain exclusively to any one utility or department. The salaries and general expenses of the commission or bureaus thereof not chargeable to a specific utility shall be apportioned fairly among the utilities under the control of the commission in such manner as the commission may deem appropriate, and such apportionment shall be shown as expenses of such utilities. The Hetch Hetchy project shall not be deemed completed until a specific finding of completion thereof has been made by the commission and approved by the board of supervisors by a two-thirds vote. [*Amended, 1963*]

Cited in *Yosemite, etc., Corp. v. State Board of Equalization* (1943) 59 Cal. App. (2d) 39, 138 Pac. (2d) 39.

Referendum on Any Lease or Sale of Public Utility Property

SECTION 123. The board of supervisors shall have power to lease or sell any public utility or any part thereof; provided that any ordinance or other measure involving the lease or sale of any public utility or part thereof, except as provided in sections 92 and 93 of this charter, or any ordinance granting any new franchise for the operation of any public utility whose franchise has expired, or is about to expire, must be referred and submitted to a vote of the electors of the city and county at the election next ensuing not less than sixty days after the adoption of such ordinance, and shall not go into effect until ratified by a majority of the voters voting thereon.

Manager of Utilities and Other Executive Heads

SECTION 124. The public utilities commission shall appoint a manager of utilities who shall be the chief executive of the commission and shall, subject to the approval of the commission, have the management of all utilities, bureaus and operations under its jurisdiction. He shall be paid an annual salary of twelve thousand dollars (\$12,000). He shall hold office at the pleasure of the commission. Subject to the approval of the commission, he shall appoint or remove the heads of departments and bureaus under the commission, exclusive of the civil service provisions of this charter. The manager of utilities and the heads of departments

and bureaus shall each possess the necessary executive, administrative and technical qualifications for their respective offices. The manager shall have full power to administer the affairs of the commission as chief executive officer and may, with the consent of the commission, act as the head of any department or bureau created by this charter or by the commission. The salaries of the manager and heads of separate utilities and bureaus shall not exceed prevailing salaries paid those holding similar positions in comparable private employment. [*Salary of manager of utilities now subject to Section 151.1*]

Cited in **Francis v. Leavy** (1933) 131 Cal. App. 620, 21 Pac. (2d) 979 (salaries of manager and heads of utilities).

Employments

SECTION 125. All employees engaged in public utility work at the time this charter shall go into effect, and who have been permanently appointed to their respective positions in conformity with the civil service provisions of this charter, shall become employees of the public utilities commission under the classification held by each such employee at such time. All persons employed in the operating service of any public utility hereafter acquired by the city and county, at the time the same is taken over by the city and county, and who shall have been so employed for at least one year prior to the date of such acquisition, shall be continued in their respective positions and shall be deemed appointed to such positions, under, and entitled to all the benefits of, the civil service provisions of this charter; provided, however, that no person who is not a citizen of the United States shall be so continued in or appointed to his position. All persons residing outside the city and county claiming the benefit of this provision and who are not engaged on such utility work outside of the limits of the city and county shall be allowed a reasonable time, not exceeding one year, to become residents of the city and county.

Persons employed as platform men or bus operators in the operating department of the municipal railway system shall be subject to the following conditions of employment: The basic hours of labor shall be eight hours, to be completed within ten consecutive hours; there shall be one day of rest in each week of seven days; all labor performed in excess of eight hours in any one day, or six days in any one week, shall be paid for at the rate of time and one-half.

For the fiscal year beginning July 1, 1957, the basic hours of labor shall be eight hours to be completed within ten consecutive hours, provided however, in alternate weeks, there shall be two days of rest, consecutive where practicable, and all labor performed in excess of eight hours in any one day, or after a spread of ten consecutive hours in any one day, or five days in any one of such alternate weeks, shall be paid for at the rate of time and one-half.

For the fiscal year beginning July 1, 1958, and thereafter, the basic hours of labor shall be eight hours, to be completed within ten consecutive hours, and there shall be two days off, consecutive where practicable, in each week. All labor performed in excess of eight hours in any one day, or after a spread of ten consecutive hours in any one day, or five days in any one week, shall be paid for at the rate of time and one-half.

Conductors and motormen may be assigned to duty as bus operators and while assigned to such duty they shall receive the compensation fixed for such service. Such assignment shall be governed by seniority of service, subject to a qualifying test by the railroad management as to competency and to state laws as to qualifications and licensing.

The public utilities commission shall have jurisdiction over the airport now being conducted by the City and County of San Francisco, as well as over any other airport which said city and county may hereafter acquire, maintain or operate. All employees, exclusive of the manager, of the present San Francisco airport, who are actually employed at the present airport operated and maintained by the City and County of San Francisco on the effective date of this amendment and who have been continuously so employed for one year immediately preceding said date shall be continued in their respective positions as if appointed thereto after examination and certification from a list of eligibles and shall thereafter be governed by and be subject to the civil service provisions of this charter. All said employees so continued in their respective positions shall be eligible for like positions in any other airport hereafter acquired, maintained or operated by the City and County of San Francisco. [*Amended, 1940; 1941; 1957*]

The failure of the proponents of the amendment of this section in 1924 and 1925 to state a change in the basic provision expressed by

section 33 of article XVI of the former charter that "No deputy, clerk, or other employee of the city and county shall be paid for a **greater** time than that covered by his service," shows a legislative intent to specify a basis of compensation for municipal railway workers not in conflict with the existing mandate of the charter prohibiting payment for service not performed. **Gowenlock v. Turner** (1954) 42 Cal. (2d) 296 267 Pac. (2d) 310.

This section, by defining the basic work hours as eight in number, to be completed within ten consecutive hours, and by providing for overtime for work in excess of eight hours in any one day or six days in any one week, does nothing more than to specify the basis of compensation for employees. It does not require the city to pay for eight hours of work on a given day regardless of the duties performed. **Gowenlock v. Turner** (1954) 42 Cal. (2d) 296, 267 Pac. (2d) 310.

That this section was not intended to guarantee either a particular amount of wages or a work day of a given number of hours is evidenced by the fact that the 1925 amendment did not include provisions similar to the old charter section (Art. III, ch. 2, § 7b) which applied to the privately owned railways and in unmistakable terms specified a minimum wage and maximum hours of work, overtime employment being allowed if paid for at time and one-half. **Gowenlock v. Turner** (1954) 42 Cal. (2d) 296, 267 Pac. (2d) 310.

The established practice prior to 1946 of paying a full eight hours pay for all regular runs under eight hours does not indicate an administrative construction of this section favoring an eight-hour guaranteed work day. **Gowenlock v. Turner** (1954) 42 Cal. (2d) 296, 267 Pac. (2d) 310.

The right guaranteed under this section to employees of utilities acquired by San Francisco to be continued in their respective positions in the civil service could not be curtailed by a civil service commission rule requiring such employees to protest their civil service classification within 16 days on the penalty of losing their right to appeal. **Kenney v. Wolff** (1948) 84 Cal. App. (2d) 592, 191 Pac (2d) 88.

The provision of this section that employees of the municipal airport shall be appointed by and hold office at the pleasure of the manager of utilities, did not apply to an employee of the bureau of engineering of the former department of public works, although his employment was centered mainly on the airport. **Archer v. Civil Service Commission** (1934) 1 Cal. (2d) 357, 34 Pac. (2d) 1023.

The only reasonable construction to be placed on the portion of this section which allows to persons who reside outside of San Francisco and who are not engaged in work on an acquired utility outside of the city and county limits a reasonable time to become residents of San Francisco is that those persons who are engaged in such utility work outside of the city and county limits are not required to become residents of San Francisco in order to retain their positions. **Denton v. San Francisco** (1953) 119 Cal. App. (2d) 369, 260 Pac. (2d) 83.

When a person ceases to work outside the city and county limits on a public utility acquired by the city, his privilege under this section of living outside the city limits ceases; he then has a reasonable time to comply with the residence requirements prescribed by § 7, which time by analogy may properly be measured by the provision of this section specifying "not exceeding one year." **Denton v. San Francisco** (1953) 119 Cal. App. (2d) 369, 260 Pac. (2d) 83.

Where it was established practice by rule of the San Francisco public utilities commission to give conductors, motormen and bus drivers a

priority in the choice of carbarns, runs and vacation periods based upon length of service, and, in determining such length of service, credit to limited tenure appointees under § 145.1 appointed from regular registers "to succeed themselves" in the same positions was given for length of service under the limited tenure appointment, the provision of § 125 recognizing the right to preference in assignment to duty as bus operators based on seniority of service could not be invoked in a mandamus proceeding to compel discontinuance of such practice. **Hart v. Landis** (1951) 103 Cal. App. (2d) 284, 229 Pac. (2d) 380.

In the provision of this section that if one has been employed for one year in an acquired utility such employee shall be deemed appointed to such position and entitled to "all benefits" of the service under the municipality, "such position," if not the identical position should be interpreted as meaning a similar position in kind and degree—one that in salary, authority, duties, etc., is reasonably comparable to the employee's former position. **Handlon v. Wolff** (1945) 72 Cal. App. (2d) 53, 164 Pac. (2d) 46.

Cited in **Palmer v. Wolff** (1948) 88 Cal. App. (2d) 979, 200 Pac. (2d) 167; **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118; **Francis v. Leavy** (1933) 131 Cal. App. 620, 21 Pac. (2d) 979 (Positions held at pleasure of manager of utilities).

**Employments—Public Utilities to Be Acquired by Lease or
Other Temporary Arrangement**

SECTION 125.1. All persons employed in the operating service of any public utility hereafter acquired by lease or under any other temporary arrangement, under which the city acquires the right to operate said utility, shall be continued in their respective positions and shall be deemed appointed to such positions under, and entitled to all, the benefits of the civil service provisions of this charter for the period of time during which the city shall continue to operate said utility under said lease or other temporary arrangement. Should the city permanently acquire said utility, said persons shall come into the permanent employ of the city and county in their respective positions and shall be deemed permanently appointed thereto under the civil service provisions of the charter and shall be entitled to all the benefits thereof, all subject to the provisions contained in section 125 of the charter; provided, however, that said employees who are taken over into the employ of the city under said lease or other temporary arrangement shall not be subject to the residential qualifications of the charter, during the term of said lease or other temporary arrangement. All employees of any such utility, acquired or operated by the city under any lease or other temporary arrangement, who come into the employ of said utility after the temporary acquisition of same, shall be subject to the civil service provisions of the charter. The civil service rights of any person who comes into the service of the city under any lease or other temporary arrangement for the acquisition and operation of said utility shall cease and terminate upon the expiration of said lease or other temporary arrangement. [*New section, 1941*]

Legal Work of Commission

SECTION 126. The city attorney, as the legal adviser of the commission, may, with the approval of the commission, compromise, settle or dismiss any litigation or proceedings which may be pending for or on behalf of or against said commission relative to any matter or property under its jurisdiction. He shall detail to the commission such attorneys as the commission may deem necessary, subject to the approval of the commission as to each such attorney or assistant so assigned. The commission shall have authority, subject to the approval of the mayor, to appoint

special counsel for temporary purposes. The compensation of all such attorneys shall be paid by the commission from the revenues of the utilities under its jurisdiction.

Operating Expenses and Reserves

SECTION 127. Receipts from each utility operated by the commission shall be paid into the city and county treasury and maintained in a separate fund for each such utility. Appropriations from such funds shall be made for the following purposes for each such utility in the order named, viz: (a) for the payment of operating expenses, pension charges, and proportionate payments to such compensation and other insurance and accident reserve funds as the commission may establish or the board of supervisors may require; (b) for repairs and maintenance; (c) for reconstruction and replacements as hereinafter described; (d) for the payment of interest and sinking funds on the bonds issued for acquisition, construction or extensions; (e) for extensions and improvements, and (f) for a surplus fund. [*Amended, 1937*]

In the provision of this section authorizing expenditure from a fund for a utility "for the payment of operating expenses," the term "operating expenses" is not confined to maintenance, and may include an expense for an appearance by a committee before Congress to urge legislation beneficial to the city. **Powell v. San Francisco** (1944) 62 Cal. App. (2d) 291, 144 Pac. (2d) 617.

The provision (of former § 16, Art. XII) for appropriations for extensions and improvements did not authorize an expenditure for investigation of a street railway system with a view toward its purchase. **Mobley v. Board of Public Works** (1919) 44 Cal. App. 167, 186 Pac. 412.

Corresponding provision (§ 16, Art. XII) of former charter cited: **Hunt v. Boyle** (1928) 204 Cal. 151, 267 Pac. 97.

Depreciation

SECTION 128. For the purpose of computing net income, the commission, on the basis of an appraisal of the estimated life and the then current depreciated value of the several classes of property in each utility, shall determine the amount of reasonable annual depreciation for each utility. During the fiscal year 1937-1938 and at least every five years thereafter, the commission shall make an appraisal or may revise the last preceding appraisal of the value and probable useful life of each of the several classes of property of each utility, and shall, on the basis of said ap-

praisal, redetermine the amount of the reasonable annual depreciation for each utility. [*Amended, 1937*]

Cited in **Powell v. San Francisco** (1944) 62 Cal. App. (2d) 291, 144 Pac. (2d) 617.

Reconstruction and Replacements

SECTION 128.1. For the purpose of providing funds for reconstruction and replacements due to physical and functional depreciation of each of the utilities under the jurisdiction of the commission, the commission must create and maintain a reconstruction and replacement fund for each such utility, sufficient for the purposes mentioned in this section, and in accordance with an established practice for utilities of similar character, which shall be the basis for the amount necessary to be appropriated annually to provide for said reconstruction and replacements. [*New section, 1937*]

The provision of this section authorizing a fund for reconstruction and replacements due to physical and "functional depreciation" of utilities, includes replacement of parts due to obsolescence and inadequacy as well as to complete decay. **San Francisco v. Boyd** (1941) 17 Cal. (2d) 606, 110 Pac. (2d) 1036.

Under § 77, authorizing transfer and use of a surplus for another purpose within a department, and this section, authorizing creation of a fund for reconstruction and replacements due to functional depreciation of utilities, a surplus of the municipal railway reconstruction and replacement fund may be expended for services of a civil engineer to make surveys and reports with respect to traffic and transit conditions, and extensions and improvements of the municipal railway. **San Francisco v. Boyd** (1941) 17 Cal. (2d) 606, 110 Pac. (2d) 1036.

Utility Surpluses

SECTION 129. If any accumulation in the surplus fund of any utility shall, in any fiscal year, exceed twenty-five per cent of the total expenditures of such utility for operation, repairs and maintenance for the preceding fiscal year, such excess may be transferred by the board of supervisors to the general fund of the city and county, and such amount shall be deposited by the commission with the treasurer to the credit of such general fund.

Cited in **Powell v. San Francisco** (1944) 62 Cal. App. (2d) 291, 144 Pac. (2d) 617.

Rates

SECTION 130. The commission shall have power to fix, change and adjust rates, charges or fares for the furnishing of service

by any utility under its jurisdiction, and to collect by appropriate means all amounts due for said service, and to discontinue service to delinquent consumers and to settle and adjust claims arising out of the operation of any said utilities.

Rates may be fixed at varying scales for different classes of service or consumers. The commission may provide for the rendition of utility service outside the limits of the city and county and the rates to be charged therefor which may include proportionate compensation for interest during the construction of the utility rendering such service.

Before adopting or revising any schedule of rates or fares, the commission shall publish in the official newspaper of the city and county for five days notice of its intention so to do and shall fix a time for a public hearing or hearings thereon, which shall be not less than ten days after the last publication of said notice, and at which any resident may present his objection to or views on the proposed schedule of rates, fares or charges.

Rates for each utility shall be so fixed that the revenue therefrom shall be sufficient to pay, for at least the succeeding fiscal year, all expenses of every kind and nature incident to the operation and maintenance of said utility, together with the interest and sinking fund for any bonds issued for the acquisition, construction or extension of said utility; provided that, should the commission propose a schedule of rates, charges or fares for said utility which shall not produce such revenue, it may do so with the approval of the board of supervisors, by a two-thirds vote and it shall thereupon be incumbent to provide by tax levy for the additional amount necessary to meet such deficit. All other changes in rates, charges or fares as proposed by the commission shall be submitted by the commission to the board of supervisors for approval, and, except as in this section otherwise provided, it shall require a two-thirds vote of the board of supervisors to reject the rate changes as proposed by the commission, and if so rejected, such proposed changes in schedules of rates, charges or fares shall be returned to the commission for revision. If the supervisors shall fail to act on any such proposed schedule within thirty days, the schedule shall thereupon become effective.

The proviso that "should the commission propose a schedule of rates . . . for [a] utility which shall not produce . . . [revenue sufficient to pay the operating expenses of the utility for at least the succeeding

fiscal year], it may do so with the approval of the board of supervisors by a two-thirds vote and it shall thereupon be incumbent to provide by tax levy for the additional amount necessary to meet such deficit," is inapplicable where under a proposed rate there will be no deficit. Hence, an order fixing an increased fare for the city transportation system becomes effective, although disapproved by the board of supervisors by a majority less than a two-thirds majority vote, where the estimated revenue for the next succeeding fiscal year, added to the revenue from the increased fare from the effective date of the new schedule to the end of the current fiscal year, will make a sum in excess of the estimated operating expenses for the next fiscal year. **Hurst v. San Francisco** (1948) 33 Cal. (2d) 298, 201 Pac. (2d) 805.

The words "succeeding fiscal year," in the fourth paragraph of this section, means the next complete fiscal year after the date the schedule is fixed, rather than the rest of the fiscal year in which the rate is established. **Hurst v. San Francisco** (1948) 33 Cal. (2d) 298, 201 Pac. (2d) 805.

Cited in **Bowles v. San Francisco** (1946) 64 Fed. Supp. 609.

Street Railway 25-Year Operating Permit

SECTION 131. Any person, firm or corporation, hereinafter called declarant, engaged in operating a street railway in the City and County of San Francisco, may, at any time within twelve months after this section takes effect, make and file with the clerk of the board of supervisors of said city and county a written declaration of surrender to the City and County of San Francisco of all rights, franchises, privileges, permits or resolutions theretofore granted to or held by declarant, or its predecessors in interest, to operate said street railway under said rights, franchises, privileges, permits and resolutions over the streets, avenues and highways in the City and County of San Francisco set forth in said declaration of surrender, and, in consideration and by reason thereof, declarant shall, upon making and filing such declaration of surrender as aforesaid, immediately and automatically by operation of law and without further act on the part of such declarant or by the city and county, have and hold, in place thereof, an operating permit from the city and county giving and granting unto such declarant, its successors or assigns, the right, until such operating permit is revoked in the manner hereinafter set forth, to operate its cars by means of the overhead electric system, by cables running under the ground and moved by stationary engines, or electric motors, or by such other means as the law may permit, and buses, over the streets and highways in the city and county set forth and enumerated in said declaration of surrender, whether under then existing franchises, or

otherwise, and to conduct in the city and county the same railway business theretofore conducted therein by such declarant and, for that purpose, to have the use of the streets, roads, highways, and avenues in the city and county and of the same, or like tracks, roadbeds, and other structures and rights of way therein, but upon all the terms and conditions contained in the rights, franchises, privileges, permits and resolutions existing as of February 15, 1929, and in the orders, resolutions and ordinances referred to in such declaration of surrender except that the term or condition as to the period of duration of any right, franchise, privilege, permit or resolution applicable to any operating permit or to any right thereunder, shall be for twenty-five years from the date of the filing of the declaration of surrender by declarant herein referred to. Said permit shall apply only to streets, avenues or highways over which the declarant operated its railway at any time during the year 1930.

The provisions of this section shall not apply to the franchises granted under the following named ordinances of the city and county, namely, Ordinance Number 288 (New Series) approved October 17, 1907, and Ordinance Number 425 (New Series) approved May 12, 1908, commonly known as the Parkside franchises, and Ordinance Number 1196 (New Series) approved June 14, 1910, commonly known as the Gough Street franchise, and Ordinance Number 1460 (New Series) approved January 23, 1911, commonly known as the Parnassus and Ninth Avenue franchise, nor to that portion of the franchise granted under Order Number 1532, approved November 28, 1879, for the operation of a railway on Howard street from Steuart street to Twenty-sixth street, nor to that portion of the franchises granted under Order Number 1890, approved December 27, 1886, for the operation of a railway commencing at the intersection of Post street with Market street, thence along and upon Post street to Leavenworth street.

Such declaration of surrender shall be executed by the declarant and acknowledged and certified in the manner provided by law for the conveyances of real property. Upon the presentation to the clerk of the board of supervisors of such declaration of surrender executed, acknowledged and certified, as aforesaid, it shall be the duty of the clerk of the board of supervisors to file the same and to endorse thereon the fact and date of such filing and to sign such endorsement and to deliver to the declarant a true

and correct copy of such declaration of surrender so filed with him, with his certificate attached thereto signed by him and attested by the seal of the city and county to the effect that the same is a true and correct copy of the declaration of surrender so filed with him and stating therein the date of such filing and the name of the declarant executing such declaration and such certificate shall be conclusive evidence of the facts therein recited.

Every permit, given and granted as in this section provided, shall be for the period of twenty-five years, as hereinbefore stated, and shall be subject always to the right of the city and county at any time to acquire and possess the operative railway property of the holder of said permit upon paying the fair value therefor, hereinafter referred to as compensation.

The compensation to be paid for the property to be acquired, as aforesaid, shall be fixed and determined by agreement by and between the owner of such property and the board of supervisors, authorized by ordinance, or by the owner of such property and any other governmental body with legal and proper authority, and, in case of their failure to agree, the said compensation to be paid as aforesaid shall be fixed in any manner provided by law, whether by condemnation proceedings in the exercise of the power of eminent domain or otherwise. The compensation herein referred to shall not include any claim for going concern value or any other like intangible by any declarant.

Whenever the city and county desires to acquire said railway property, the city and county shall give the holder of said permit written notice, duly authorized by ordinance, of its intention to take over and acquire said properties on a date to be stated in said notice, but in no event less than three months nor more than fifteen months from the date of said notice; and, upon payment or tender of said compensation on the date so noticed, together with compensation for the cost, less accrued depreciation, of any additions or betterments to said property since the date of filing said declaration of surrender, said permit shall be thereby revoked and the holder thereof shall immediately deliver said property to the city and county, and transfer the same by appropriate deeds of grant, bargain and sale, and other assurances of title.

Failure of the city and county to pay or tender said compensation, as aforesaid, shall not prevent said city and county from

thereafter, at such time as it shall deem proper, taking proceedings to purchase, acquire and possess said operative properties, as in this section provided.

None of the provisions of this charter concerning or relating to the granting of franchises to operate street railways shall be applicable to the permits given and granted under the provisions of this section or under the provisions of section 132 of this charter or to any right thereunder, it being the purpose and intention of said two sections to provide for permits and rights thereunder which can be used and exercised by the holder thereof, its successors or assigns, without reference to any of the terms or conditions under which franchises may be granted under this charter, until such time as the city and county shall purchase, take over and acquire the operative railway property of such holder.

Cited in **Market Street Ry. Co. v. Railroad Commission** (1944) 24 Cal. (2d) 378, 150 Pac. (2d) 196, affirmed (1945) 324 U.S. 548, 65 S. Ct. 770, 89 L. Ed. 1171, rehearing denied (1945) 324 U.S. 890, 65 S. Ct. 1020, 89 L. Ed. 1438; **San Francisco v. Market Street Ry. Co.** (1938) 98 Fed. (2d) 628.

Street Railway Extensions and Abandonments

SECTION 132. The board of supervisors shall have power to grant by ordinance to any holder of a permit, secured as provided in section 131 of this charter, supplemental permits authorizing such holder, its successors or assigns, to construct and operate in conjunction with its existing lines upon, over or under any of the streets, roads, highways, and avenues of the city and county, an extension or extensions of an existing street railway or bus line in the same manner and subject to the same terms and conditions under which said line from which it is proposed to make the extension, is operated, when such supplemental permit is granted. Every such supplemental permit shall expire concurrently with the permits granted upon the filing of the declaration of surrender provided in section 131 of this charter, and shall be subject always to the aforesaid right of the city and county to acquire and possess the operative railway property of the holder of such supplemental permit as provided in section 131 of this charter. No line of street railway in the city and county, or any portion thereof, operated under authority of any permit, authorized by the provisions of this charter, shall be

abandoned unless the holder of such permit shall, by written petition to the board of supervisors, request authority to make such abandonment, and unless the board of supervisors, upon receiving such a petition, shall authorize such abandonment by ordinance and shall first find that the public interest will not be injured or suffer by such abandonment and shall so recite in the ordinance authorizing such abandonment.

Cited in **San Francisco v. Market Street Ry. Co.** (1938) 98 Fed. (2d) 628.

Abandonment of Street Car or Other Transportation Service

SECTION 132.1. In the event of the unification, consolidation or merger of the San Francisco Municipal Railway with any privately owned street railway system or with any portion or facility thereof, no line of street railway, bus line, trolley bus line or cable car line, or any portion thereof, which is now or will be owned by the City and County of San Francisco and is now or will be operated by the public utilities commission, shall be abandoned nor shall the service be discontinued thereon except upon recommendation by the public utilities commission, in writing, to the board of supervisors. The recommendation of the public utilities commission shall be acted upon by the board of supervisors within thirty days from the receipt thereof. For the purpose of hearing such recommendation a public hearing shall be held. If the said recommendation is disapproved by at least nine votes it shall not become effective and such service shall be continued. If said recommendation is not disapproved by nine votes of said board the recommendation shall become effective forthwith. Failure of the board of supervisors to act on said recommendation within thirty days shall be deemed as the approval of said recommendation of the public utilities commission; provided that the public utilities commission may without reference or recommendation to the board of supervisors abandon or discontinue service on any line of street railway, bus line, trolley bus line, or cable car line, or any portion thereof, which has been in operation for less than one year next immediately preceding such order of abandonment or discontinuance. [*New section, 1943*]

Regulation of Street Railways

SECTION 133. The public utilities commission, subject to the provisions, limitations and restrictions in this charter contained, shall have power to regulate street railroads, cars and tracks; to permit two or more lines of street railways operating under different management to use the same street, each paying an equal portion for the construction and repair of the tracks and appurtenances used by the said railways jointly for such number of blocks consecutively, not exceeding ten blocks; to regulate rates of speed and propose such ordinances to the board of supervisors as are necessary to protect the public from danger or inconvenience in the operation of such roads.

No person, firm or corporation shall ever be granted the exclusive right to operate a street or other railroad through, in or under any tunnel, subway or viaduct constructed or acquired by the levy, in whole or in part, of special assessment upon private property for such construction or acquisition. Two or more lines of street railways operated under different management may use such tunnel, subway or viaduct for the entire length thereof and for five consecutive blocks approaching each end thereof, each management paying an equal portion of the expense for the construction, maintenance and repairs of the tracks and appurtenances used by said railways jointly. The city and county in the operation of a municipal railway may use any such tunnel, subway or viaduct either singly or jointly with any privately operated railway for the entire length thereof and for any number of blocks approaching each end thereof; and in case of joint use of tracks, shall pay an equal portion of the expense for the construction, maintenance and repairs of the tracks and appurtenances used by said railways jointly.

SCHOOLS

Board of Education

SECTION 134. All of the public schools of the school district of the city and county shall be under the control and management of a board of education, composed of seven commissioners, who shall be nominated by the mayor and be subject to confirmation or rejection by vote of the electors as in this section provided, and who shall be subject to recall, and to suspensions and removal in the same manner as elective officers, as provided by this charter. The term of each member shall be five years, commencing on the 8th day of January following their respective nominations, provided that each such five-year term shall begin at the expiration of the respective terms of members as existing at the time this charter shall go into effect. The compensation of each member shall be one hundred dollars (\$100) per month.

Nominations of members of the board of education shall be made, subject to confirmation by the electors, by the filing by the mayor, with the registrar of voters between the first and the tenth day of September in each year prior to the expiration of the term or terms of members, the name of one qualified citizen, or two, as the case may be, to serve as a member or members, respectively, of said board for the regular term or terms commencing on the 8th day of January in the succeeding year.

The form of ballot shall be as provided in section 184 of this charter and if a majority of the qualified electors voting on said nomination or nominations shall vote in favor thereof, said nomination shall be confirmed and the person or persons named shall take office on the 8th day of January next following. If a majority of the electors vote "No," the nomination shall stand rejected, and such person shall not be eligible for nomination as a member of the board of education for a period of at least three years. If a majority of the electors vote "No," the mayor shall appoint a qualified citizen to serve as a member of the board until the 8th day of January following the next general election or general municipal election, whichever shall first be held. Between the first and tenth day of September before such general election or general municipal election, the mayor shall nominate, subject to confirmation by the electors at such election, as herein

provided, a qualified citizen to serve as a member of the board for the remainder of the five-year term for which the nomination first made by the mayor was rejected. Vacancies otherwise occurring on said board shall be filled by the mayor for the unexpired terms. [*Amended, 1947; 1952*]

Cited in **Lansing v. Board of Education** (1935) 7 Cal. App. (2d) 211, 45 Pac. (2d) 1021.

Corresponding provision (§ 3, Ch. 1, Art VII) of former charter cited in **Esberg v. Badaracco** (1927) 202 Cal. 110, 259 Pac. 730.

Powers and Duties of Board of Education

SECTION 135. In addition to the powers conferred by the general laws of the state and other provisions of this charter, the board of education shall have power to establish and maintain such schools as are authorized by the laws of the state as the board may determine, and to change, modify, consolidate or discontinue the same as the public welfare may require.

The board shall also have power to employ such teachers and other persons as may be necessary to carry into effect its powers and duties; to fix, alter and approve their salaries and compensations, except as in this charter otherwise provided, and to withhold for good and sufficient cause the whole or any part of the wages, salary, or compensation of any person or persons employed as aforesaid; and to promote, transfer and dismiss teachers, but no teacher shall be dismissed from the department except for insubordination, immoral or unprofessional conduct, or evident unfitness for teaching. Appointment, promotion, assignment and transfer of deputy superintendents, principals, assistants, teachers and all other certificated employees shall be made by the board of education upon the recommendation of the superintendent of schools. All promotions of teachers shall be based solely on merit. Nothing in this section shall be construed to prevent the board from removing teachers as provided in this charter and the laws of the state. Charges against teachers must be made in writing by the superintendent after investigation and shall be finally passed upon by the board after giving the accused teacher a fair and impartial hearing before said board.

All teachers, heads of departments, vice-principals, principals, supervisors and directors shall be classified as permanent employees in their respective positions after they have been success-

fully employed in such positions in the school department for a probationary period of three years. In the absence of any action to the contrary by the board of education at the end of the third year of such employment, the classification shall be considered as permanent. A deputy superintendent shall be classified as a permanent employee in such position in the school department in which he was permanently employed immediately prior to his appointment as deputy.

Non-teaching and non-technical positions, and positions not required by law to be filled by a person holding a teaching or other certificate as required by law, shall be employed under the civil service provisions of this charter and the compensations of such persons shall be fixed in accordance with the salary standardization provisions of this charter.

The board of education shall have power to grant and to renew, and, for insubordination, immoral or unprofessional conduct or unfitness for teaching, to revoke teachers' certificates.

The board shall establish regulations subject to the approval of the controller for the disbursement of all moneys belonging to the school department or the school fund or funds, and to secure strict accountability in the expenditure thereof, and to provide for the prompt payment of all salaries due and allowed to officers, teachers and other employees of the school department.

Notwithstanding any other provision of this charter to the contrary, the board of education of the San Francisco Unified School District may authorize payment of the annual compensation of certificated employees in twelve equal payments, the first such equal payment being made on or before the 5th day of August of each school year, and continuing each month thereafter until the full annual compensation shall be paid, provided that the last equal payment shall be made not later than the 5th day of July of the succeeding school year, and provided further that in the event that the certificated employee for any reason does not perform the full year of service, said certificated employee shall receive only such amount as is authorized by the school code of the State of California. In the event said certificated employee has been paid an amount greater than such employee is entitled to receive under the provisions of the school code of the State of California, said certificated employee shall be liable therefor and within thirty days after such excess payment said

certificated employee shall reimburse the San Francisco Unified School District for the excess, and said certificated employee shall not be paid any of his retirement accumulations or credits until the San Francisco Unified School District has been reimbursed for the said excess.

The board shall, between the 1st and 21st days of May of each year, adopt a schedule of salaries for the next ensuing fiscal year for teachers and other employees of the school department. Compensations of non-teaching and non-technical employees shall be fixed in accordance with the salary standardization provisions of this charter. [*Amended, 1943*]

A person employed for two years as a principal and who had for the two previous years been employed in another capacity did not, before dismissal because of a consolidation of schools, acquire permanent status under this section as principal. **Constantine v. Board of Education** (1941) 43 Cal. App. (2d) 794, 111 Pac. (2d) 698.

The provisions of this section relating to tenure of principals, and including principals among those who may not be dismissed without cause, is not unconstitutional and not in conflict with the general laws of the state but are in furtherance of the purpose of the general laws. **Anderson v. Board of Education** (1932) 126 Cal. App. 514, 15 Pac. (2d) 774, 16 Pac. (2d) 272.

A teacher who was employed for more than three years as teacher in the day high schools of the city and as principal of a night high school, then was dismissed without cause, and without charges or hearing, from the position as principal had acquired permanent tenure and was entitled to reinstatement. **Anderson v. Board of Education** (1932) 126 Cal. App. 514, 15 Pac. (2d) 774, 16 Pac. (2d) 272.

A teacher who for more than three years had instructed day classes in one school and night classes in another school in the same district, then was dismissed without cause and without charges or hearing from the position as night school instructor had acquired permanent tenure both under this section of the charter, and was therefore entitled to reinstatement to such position. **Cullen v. Board of Education** (1932) 126 Cal. App. 510, 15 Pac. (2d) 227.

Cited in **Klein v. Board of Education** (1934) 1 Cal. (2d) 706, 37 Pac. (2d) 74; **Leonard v. Board of Education** (1940) 36 Cal. App. (2d) 595, 97 Pac. (2d) 1032; **Lansing v. Board of Education** (1935) 7 Cal. App. (2d) 211, 45 Pac. (2d) 1021.

Corresponding provisions (§ 3, Ch. 1, Art VII) of former charter cited in **Esberg v. Badaracco** (1927) 202 Cal. 110, 259 Pac. 730.

Non-Certificated Employees, in Public School Cafeterias, With Certain Exceptions, Subject to Civil Service

SECTION 135.1. All non-certificated public school cafeteria employees of the San Francisco Unified School District, except those holding part-time positions, which are within the limita-

RULE 18. CREATION OF, OR CHANGE IN, POSITIONS.

Section 1. CREATION OF: Positions in any department or office of the city and county may be created, as provided by the charter, by appropriation ordinance of our Board of Supervisors. Copy of each such ordinance creating or abolishing positions shall be filed, on the approval thereof, with the Civil Service Commission by the Clerk of the Board of Supervisors. Before the appointing officer shall make recommendation for the creation of any new or additional position in any department or office, he shall request and receive from the Civil Service Commission the proper designation and classification of such position based on the duties and responsibilities thereof, and if such position is included in the classified civil service, the Commission may, in writing, express to the appointing officer and the Board of Supervisor its opinion as to whether or not such position is needed.

Section 2. CHANGE IN: Immediate notice in writing shall be given to the Civil Service Commission by the appointing officer of each department and office of the city and county of the creation or abolition of any position, or of any change in duties if the position is included in the classified civil service, or of any appointment, resignation, suspension, dismissal or other creation of vacancy therein, or change in assignment from one bureau to another, with the date of any such change. If said appointing officer is also empowered to establish compensation rates or make changes therein, he shall immediately notify the Commission of any such rate or change therein. The Commission shall maintain a record of all such notifications. (Sec. 143.)

RULE 19. REQUISITIONS.

Requisitions for the certification of eligibles shall be made upon forms provided by the Civil Service Commission and shall bear all required information and approvals before being filled by the Civil Service Commission. Upon receipt of approved requisitions they shall immediately be time stamped, in the order of their receipt. Unless otherwise ordered by the Commission, positions for which requisitions are issued shall be offered to eligibles as provided in Rule 20 in accordance with the priority of receipt of the requisition in the office of the Commission, or in accordance with the date to report for duty if such date to report is later than the date of receipt, provided that if at the time an eligible list is adopted, two or more approved requisitions from two or more departments are on file in the office of the Commission, and eligibles on the list who would be reached for appointment on such requisitions are at that time employed in the city and county service, the General Manager, Personnel, following consultation with appointing officers and employees involved, and if it is in the best interests of the service, may offer out said positions to such eligibles so as to make it possible for the continued employment of such eligibles in their own departments. A separate requisition shall be made for each permanent position to be filled. Group requisitions may be made only for temporary (or seasonal) positions. A temporary requisition will be valid for the term of the requisition without regard to the number of persons appointed against it. Requisitions must be signed by the appointing officer. Upon presentation of satisfactory reason therefor by the appointing officer who issued the requisition, cancellation of the requisition may be allowed by the Civil Service Commission or the General Manager, Personnel. (Section amended 6/27/63 and 3/19/64)

RULE 20. CERTIFICATIONS.

Section 1. ONLY ONE NAME TO BE CERTIFIED: In filling requisitions filed in accordance with the provisions of Rule 19, only one name shall be certified for each position to be filled. The position shall first be offered to the eligible having highest standing on the eligible list who is available for the type of appointment offered. If the highest eligible waives the appointment, then the next available eligible in line as provided in Rule 19 shall be offered the position, provided that such eligible has not already been offered appointment from the list. In the case of a temporary requisition where such requisition is authority for subsequent certifications following separation of an appointee, the highest available eligible as of the date the document is received from the appointing officer requesting that certification be made, shall be certified. (Section amended 3/11/55, 1/15/59, and 3/19/64)

Section 2. APPOINTING OFFICER'S REQUEST FOR APPOINTMENT OF AN ELIGIBLE OF PARTICULAR SEX: In all cases where an appointing officer considers that a vacancy in a civil service position should be filled by an eligible of a particular sex, he shall so advise the Civil Service Commission at the time of his request, specifying in detail the factual basis for his request.

After consideration of the matter, the Civil Service Commission may refer the matter back to the appointing officer with its comments for his further consideration. Should the appointing officer, after further consideration, again request that such civil service position be filled by an eligible of a particular sex, such determination will be final except so far as anyone may seek review in the courts. (Section amended 7/2/59).

tions as set forth in Section 142 (2) of this charter shall be governed by and shall be subject to the civil service and other provisions of this charter. [*New section, 1949; amended, 1963*]

Superintendent of Schools

SECTION 136. The superintendent of schools shall be the executive officer of the board of education. He shall be appointed by said board to serve for a term of four years and he shall receive an annual salary of \$10,000 unless an increase in said salary shall be fixed by the board of education and approved by the board of supervisors.

During his term of office the superintendent may be removed from his office, as in this section hereinafter provided, for misconduct or incompetency after charges setting forth the nature and character of said misconduct or incompetency are filed against the said superintendent. Said charges must be in writing and shall be signed by at least two members of the board of education. A copy of said charges, together with a notice of the time and place of the hearing on the same, shall within five days after the filing of the same be served upon the said superintendent. The mailing of a copy of said charges, with notice of time and place of hearing on the same, by United States registered mail, with the proper amount of postage prepaid thereon, addressed to said superintendent at his last known place of residence, shall be deemed to be a service of said charges as provided for in this section. A public hearing on said charges shall be had by the board of education not less than ten, nor more than twenty, days after the filing of said charges, provided that full power and authority is hereby given to the board of education to continue said hearing from time to time not to exceed sixty days from the commencement thereof, provided that for good cause said board may grant a further continuance on said hearing. The superintendent shall have the right to answer said charges, to appear at the hearing thereof and to be represented by counsel thereat for the purpose of defending himself against said charges. Pending the determination of said charges, the superintendent may be suspended from his office by a majority vote of the board of education, and the board may appoint a qualified person to discharge the duties of said superintendent

during the period of suspension. If the board of education after hearing said charges shall by a two-thirds vote of all the members, determine that said charges have been sustained, it may by the same vote remove said superintendent from his office. No member of the board shall be entitled to vote on the removal of said superintendent unless he or she has been present at the entire hearing of such charges, provided that any member of the board who has not been present may vote for the removal of the superintendent, if such member has read a transcript of all the testimony taken on said hearing during his absence therefrom, and shall file with the board an affidavit to this effect. If said charges are not sustained by a two-thirds vote of all the members of said board, or if after said charges are sustained, the superintendent is not removed from office as a result thereof, said superintendent shall be reinstated in his position and shall be allowed his salary for the time that he has been under suspension, together with the costs of defending himself against said charges, including a reasonable fee for his attorney to be fixed and allowed by the board. If the charges are sustained, and as a result thereof said superintendent is removed from office, no further salary shall be allowed to said superintendent from the date of his suspension. In the hearing and determination of said charges filed against said superintendent, the judgment of said board of education shall be final unless in determining the sufficiency of said charges said board of education commits a clear abuse of discretion.

The superintendent shall have the powers and duties specified by this charter for department heads, in addition to such powers and duties as are fixed by general law.

The positions of superintendent and associate and assistant superintendents shall be held only by persons of expert or technical training, but shall not be subject to any provisions of this

charter prescribing a residence qualification for officers or appointees, provided however, that during their incumbency appointees to such positions shall reside in the city and county, and in case any appointee shall fail so to do, his appointment shall at once be revoked by the board.

The superintendent may appoint a confidential secretary who shall hold office at his pleasure. [*Amended, 1943; 1952*]

Cited in : **Leonard v. Board of Education** (1940) 36 Cal. App. (2d) 595, 97 Pac. (2d) 1032.

Corresponding provision (§ 3, Ch. 1, Art VII) of former charter cited in **Esberg v. Badaracco** (1927) 202 Cal. 110, 259 Pac. 730.

SECTION 137. [*Repealed, 1952*]

SECTION 138. [*Repealed, 1952*]

SECTION 139. [*Repealed, 1952*]

CIVIL SERVICE

Civil Service Commission

SECTION 140. There is hereby established a civil service commission which is charged with the duty of providing qualified persons for appointment to the service of the city and county. All appointments in the public service shall be made for the good of the public service and solely upon merit and fitness, as established by appropriate tests, without regard to partisan, political, social or other considerations.

The civil service commission shall consist of three members, appointed by the mayor. The commissioners in office at the time of the adoption of this charter, and this charter section as amended, shall continue in office until the expiration of the terms for which they were appointed, and their successors shall be appointed for terms of six years beginning on the 1st day of July immediately following the expiration of the terms for which they were appointed.

The persons so appointed shall, before taking office, make under oath and file in the office of the county clerk the following declaration: "I am opposed to appointments to the public service as a reward for political activity and will execute the office of civil service commissioner in the spirit of this declaration."

A commissioner may be removed only upon charges preferred, in the same manner as in this charter provided for elective officers. Each of the commissioners shall receive a monthly salary of one hundred dollars (\$100).

Special meetings of the commission for the purpose of considering and adopting examination questions shall not be open to the public. The regular meetings of the civil service commission shall be open to the public and held at such a time as will give the general public and employees of the city and county adequate time within which to appear before the commission after the regular daily working hours of 8 A. M. to 5 P. M. Such person or persons shall be given an opportunity to be heard by the commission before final action is taken in any case involving such person or persons. [*Amended, 1946*]

The civil service system rests on the principle of application of the merit system instead of the spoils system in the matter of appointment

and tenure of office; to such end, the charter (§§ 140-143) establishes a classified civil service system, with exclusive power in the civil service commission to provide qualified personnel for the various municipal departments and to classify or reclassify positions according to prescribed duties. **Hanley v. Murphy** (1953) 40 Cal. (2d) 572, 255 Pac. (2d) 1.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **San Francisco v. Boyd** (1941) 17 Cal. (2d) 606, 110 Pac. (2d) 1036; **Amerio v. San Francisco** (1954) 126 Cal. App. (2d) 379, 271 Pac. (2d) 996; **Butler v. San Francisco** (1951) 104 Cal. App. (2d) 126, 231 Pac. (2d) 75; **Terry v. Civil Service Commission of San Francisco** (1952) 108 Cal. App. (2d) 861, 240 Pac. (2d) 691; **Shannon v. McKinley** (1944) 62 Cal. App. (2d) 169, 144 Pac. (2d) 433; **Dierssen v. Civil Service Commission** (1941) 43 Cal. App. (2d) 53, 110 Pac. (2d) 513.

Powers and Duties

SECTION 141. The civil service commission shall be the employment and personnel department of the city and county and shall determine appointments on the basis of merit and fitness, as shown by appropriate tests. The commission shall classify, and from time to time may reclassify, in accordance with duties and responsibilities of the employment, and training and experience required, all places of employment in the departments and offices of the city and county not specifically exempted by this charter from the civil service provisions thereof, or which may be created hereafter by general law and not specifically exempted from said civil service provisions. The commission shall likewise classify all other positions or other places of employments in the city and county service specifically exempted from the civil service provisions of this charter, but which, by the provisions of section 151, thereof, are made subject to classification for salary standardization purposes on the basis of duties and responsibilities of the employment, and training and experience required. The civil service commission shall be the judge of such classification.

The commission shall also, in accordance with duties and responsibilities, allocate, and from time to time may reallocate, the positions to the various classes of the classification. The allocation or re-allocation of a position shall not adversely affect the civil service rights of an occupant regularly holding such position. No person shall hold a position outside of the classification to which he has been appointed, provided that every employee of any department or office shall discharge any of the duties pertaining to such department or office to which his chief may temporarily assign him.

The class titles and class numbers assigned to positions by the commission shall be used in all records, reports, statements and communications, including the compensation schedule, annual budget and salary ordinance, payrolls, and appropriation ordinances.

The commission shall adopt rules to carry out the civil service provisions of this charter and, except as otherwise provided in this charter, such rules shall govern applications; examinations; eligibility; duration of eligible lists; certification of eligibles; appointments; promotions; transfers; resignations; lay-offs or reduction in force, both permanent and temporary, due to lack of work or funds, retrenchment, or completion of work; the filling of positions, temporary, seasonal and permanent; classification; approval of payrolls; and such other matters as are not in conflict with this charter. The commission may, upon one week's notice, make changes in the rules, which changes shall thereupon be published, and be in force; provided that no such change in rules shall affect a case pending before the commission. The secretary may certify eligibles and payrolls and conduct examinations under the rules of the commission.

The commissioners shall have power to institute and prosecute legal proceedings for violations of any of the civil service provisions of this charter.

The civil service system rests on the principle of application of the merit system instead of the spoils system in the matter of appointment and tenure of office; to such end, the charter (§§ 140-143) establishes a classified civil service system, with exclusive power in the civil service commission to provide qualified personnel for the various municipal departments and to classify or reclassify positions according to prescribed duties. **Hanley v. Murphy** (1953) 40 Cal. (2d) 572, 255 Pac. (2d) 1.

Under the authority conferred upon the commission by this section to adopt rules to govern its action in carrying out this and other civil service provisions of the charter, and in view of the duties imposed upon it by § 148, it has power to formulate, adopt and apply a rule defining permanent and temporary or seasonal positions and providing that appointments to the latter positions expire automatically at the end of five months. **Villain v. Civil Service Commission** (1941) 18 Cal. (2d) 851, 117 Pac. (2d) 880.

The action of the civil service commission in designating as the cutting off date of a promotional examination the official beginning date of the examination as noted in the scope circular could not be deemed the equivalent of a rule where it did not meet the requirements of section 141 of the charter that changes in rules be published, that one week's notice be given, and that no change in the rules should affect a case pending before the commission. **Conroy v. Wolff** (1950) 34 Cal. (2d) 745, 214 Pac. (2d) 529.

The provision of this section against one holding a position "outside the classification to which he has been appointed" necessarily prohibits the payment to an employee of compensation outside the rating determining his civil service status, and one who holds a civil service position as an assistant and is appointed to perform the duties of a superior position until the vacancy in that position can be filled by a permanent appointment from the civil service list cannot claim the salary attached to such position. **Dunn v. Civil Service Commission** (1935) 3 Cal. App. (2d) 554, 40 Pac. (2d) 310.

Under its rule-making power (granted by former charter § 3, Art. XIII) the civil service commission had no power to adopt a rule whereby positions which were neither temporary in fact nor temporary by the law of their creation could be designated temporary. **McGillicuddy v. Civil Service Commission** (1933) 133 Cal. App. 782, 24 Pac. (2d) 942.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **San Francisco v. Boyd** (1941) 17 Cal. (2d) 606, 110 Pac. (2d) 1036.

Amerio v. San Francisco (1954) 126 Cal. App. (2d) 379, 271 Pac. (2d) 996; **Randall v. Wolff** (1950) 95 Cal. App. (2d) 795, 214 Pac. (2d) 58; **Shannon v. McKinley** (1944) 62 Cal. App. (2d) 169, 144 Pac. (2d) 433; **Dierssen v. Civil Service Commission** (1941) 43 Cal. App. (2d) 53, 110 Pac. (2d) 513; **Weigle v. San Francisco** (1937) 23 Cal. App. (2d) 274, 72 Pac. (2d) 902; **King v. Leavy** (1932) 124 Cal. App. 422, 12 Pac. (2d) 661, (provision as to salary standardization).

Former charter, with corresponding or similar provisions, cited: § 3, Art. XIII, rule-making by commission, **Mitchell v. McKevitt** (1932) 128 Cal. App. 458, 17 Pac. (2d) 789; § 2, Art. XIII, classification of places of employment, **Rodrigue v. Rogers** (1906) 4 Cal. App. 257, 87 Pac. 563.

Positions

SECTION 142. All positions in all departments and offices of the city and county, including positions created by laws of the State of California, where the compensation is paid by the city and county, shall be included in the classified civil service of the city and county, and shall be filled from lists of eligibles prepared by the civil service commission, excepting (1) positions in which attorneys and physicians are employed in their professional capacity to perform only duties included in their professions, but exclusive of any administrative or executive positions for which such professional status constitutes only part of the qualifications therefor; (2) inmate help or student nurses, or part-time services, where the compensation including the value of any allowances in addition thereto does not exceed one hundred fifty dollars (\$150) per month.

Provided that for each fiscal year following the fiscal year in which this amendment becomes effective, the civil service commission shall adjust the one hundred fifty dollar (\$150) maximum for part-time service as provided herein, in accordance with the

average percentage increase or decrease approved for all classifications under the provisions of section 151 and 151.1 of this charter, and such adjusted rate shall be included in the annual salary ordinance.

Provided further that such part-time positions shall not be exempted from being filled from appropriate lists of civil service eligibles, except upon the recommendation of the appointing officer, who shall set forth the schedule of operations showing that the operations involved require the service of employees for not more than seventy (70) hours per month and approval of the civil service commission, including a certification that such part-time positions cannot practically be filled from existing eligible lists.

Provided further that any occupant of a part-time position on the effective date of this amendment who is occupying such position under certification from the appropriate list of civil service eligibles shall be continued in such position subject to the conditions of his current appointment.

These provisions shall not be used to split or divide any position into two or more units for the purpose of evading the provisions of this section.

(3) Persons employed in positions outside the city and county upon construction work being performed by the city and county when such positions are exempted from said classified civil service by an order of the civil service commission; and (4) persons employed in positions in any department for expert professional temporary services, and when such positions are exempted from said classified civil service for a specified period of said temporary service, by order of the civil service commission; and (5) such positions as, by other provisions in this charter, are specifically exempted from, or where the appointment is designated as exclusive of, the civil service provisions of this charter.

The civil service rights, acquired by persons under the provisions of the charter superseded by this charter, shall continue under this charter.

Where existing positions that have heretofore been exempt from civil service examinations are now made subject to examination by this charter, the incumbents of such positions who have held such positions for a period of one year continuously next preceding the time that this charter shall go into effect, shall be

continued in their positions as if appointed thereto after examination and certification from a list of eligibles and shall be governed thereafter by the provisions of this charter, provided, however, the provisions of this paragraph shall not apply to positions heretofore defined and classified by the civil service commission as "institutional help."

Any person holding a salaried office under the city and county, whether by election or appointment, who shall, during his term of office, hold or retain any other salaried office under the government of the United States, or of this state, or who shall hold any other salaried office connected with the government of the city and county, or who shall become a member of the legislature, shall be deemed to have thereby vacated the office held by him under the city and county. [*Amended, 1933; 1937; 1958; 1963*]

The civil service system rests on the principle of application of the merit system instead of the spoils system in the matter of appointment and tenure of office; to such end, the charter (§§ 140-143) establishes a classified civil service system, with exclusive power in the civil service commission to provide qualified personnel for the various municipal departments and to classify or reclassify positions according to prescribed duties. **Hanley v. Murphy** (1953) 40 Cal. (2d) 572, 255 Pac. (2d) 1.

"Positions" in "departments and offices" of the city, within the provision of this section as to what is included in the classified civil service, connote employment to render services at a salary paid periodically. **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904.

An independent contractor engaged to do a specific professional task, such as a consulting engineer who for a stated consideration agrees to prepare and furnish plans, specifications, estimates, etc., required for a proposed sewage disposal project, and his assistants, do not become city employees in either temporary or permanent positions in the sense intended by subd. 4 of the first paragraph of this section, and an order of exemption by the civil service commission is not required. **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904.

The requirement under this section that all positions be included in the classified civil service and filled from lists of eligibles and applying to persons employed in positions in any department for expert professional temporary services is not violated by the making of the contract with a civil engineer for a traffic study where such a person is not to be placed in any position provided for by the charter. **San Francisco v. Boyd** (1941) 17 Cal. (2d) 606, 110 Pac. (2d) 1036.

An employee who had for more than one year prior to the effective date of the charter held a position on a project outside the boundaries of San Francisco was blanketed into his position by the provisions of this section continuing incumbents in their positions that had previously been exempt from civil service examinations, despite the fact that he did not fulfill the residence requirements of the charter. **Archer v. Civil Service Commission** (1943) 1 Cal. (2d) 357, 34 Pac. (2d) 1023.

Under the terms of this section continuing incumbents in those positions previously exempt from civil service examinations an employee of a project outside the city was entitled to his salary even though part of his work was actually performed within the city. **Cutting v. McKinley** (1933) 130 Cal. App. 136, 19 Pac. (2d) 507.

Placing a principal attorney in the office of the district attorney into a separate class for the purpose of exclusion from the retirement system and reemployment was justified by the fact that this section distinguishes attorneys and physicians from the great mass of city and county employees by exempting them from the civil service system. **Acton Heil, Brooks v. Henderson (Three cases)** (1957) 150 Cal. App. (2d) 1, 309 Pac. (2d) 481.

Cited in **Allen v. McKinley** (1941) 18 Cal. (2d) 697, 117 Pac. (2d) 342; **Viner v. Civil Service Commission** (1943) 59 Cal. App. (2d) 458, 139 Pac. (2d) 88; **Doerr v. Civil Service Commission** (1937) 21 Cal. App. (2d) 173, 68 Pac. (2d) 731; **McGillicuddy v. Civil Service Commission** (1933) 133 Cal. App. 782, 24 Pac. (2d) 942.

Positions in Treasurer's Office

SECTION 142.1. Any person who has performed the duties of general clerk-stenographer in the office of the treasurer continuously for five years immediately prior to the effective date of this amendment and who on said date shall be performing said duties, is hereby confirmed in said position and thereafter shall hold the same pursuant to the civil service provisions of this charter and shall be entitled to all the benefits and privileges of said provisions. [*New section, 1937*]

Creation of Positions

SECTION 143. Positions in any department or office of the city and county may be created, as provided by this charter, by appropriation ordinance of the board of supervisors. Copy of each such ordinance creating or abolishing positions shall be filed, on the approval thereof, with the civil service commission by the clerk of the board of supervisors. Before the appointing officer shall

make recommendation for the creation of any new or additional position in any department or office, he shall request and receive from the commission the proper designation and classification of such position based on the duties and responsibilities thereof, and if such position is included in the classified civil service, the commission may, in writing, express to the appointing officer its opinion as to whether or not such position is needed.

Immediate notice in writing shall be given to the civil service commission by the appointing officer of each department and office of the city and county of the creation or abolition of any position, or of any change in duties if the position is included in the classified civil service, or of any appointment, resignation, suspension, dismissal or other creation of vacancy therein, with the date of any such change. If said appointing officer is also empowered to establish compensation rates or make changes therein, he shall notify the commission of any such rate or change therein. The commission shall maintain a record of all such notifications.

The term "appointing officer" as used in this charter shall also include any board or commission in the exercise of its power to appoint a department head or other officer or employee designated by this charter as appointive by such board or commission.

The civil service system rests on the principle of application of the merit system instead of the spoils system in the matter of appointment and tenure of office; to such end, the charter (§§ 140-143) establishes a classified civil service system, with exclusive power in the civil service commission to provide qualified personnel for the various municipal departments and to classify or reclassify positions according to prescribed duties. **Hanley v. Murphy** (1953) 40 Cal. (2d) 572, 255 Pac. (2d) 1.

In the provision of this section that the only method for the creation of new positions in any department is by appropriation ordinance, the word "position" is used as embracing both officers and employees. **Brown v. Boyd** (1939) 33 Cal. App. (2d) 416, 91 Pac. (2d) 926.

Cited in **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904.

Applications

SECTION 144. Any citizen having the qualifications prescribed by section 7 of this charter may submit himself for any examination under conditions established by the civil service commission. Provided, however, applicants for positions as motorman, conductor or bus operator on the municipal railway need not be residents of the city and county at the time of application,

examination or appointment, but must become residents within the meaning of section 7 within a reasonable time, not to exceed six months, after completion of the probationary period provided in section 148. The commission shall advertise in the official paper the time, place and general scope of all examinations for entrance into the public service and may take further appropriate means to interest suitable applicants. When examinations for promotion are to be held, the commission shall give notice thereof to all persons in positions entitling them under the civil service rules, to participate in such examination, by posting information thereof in the office of the commission for a period of ten days and notifying the department concerned. [*Amended, 1957*]

Any rule adopted by the civil service commission in the exercise of its powers under this section must be reasonable and not operate to discriminate unreasonably between qualified applicants for positions; if unreasonable, those discriminated against have been denied the equal protection guaranteed by the state and federal Constitutions. **Terry v. Civil Service Commission** (1952) 108 Cal. App. (2d) 861, 240 Pac. (2d) 691.

The requirement of a college education for applicants to take the examination for playground director is a reasonable exercise of the power of the civil service commission, under this section, to adopt rules and regulations fixing the conditions under which applicants may take civil service examinations and to establish educational requirements for certain positions. **Terry v. Civil Service Commission** (1952) 108 Cal. App. (2d) 861, 240 Pac. (2d) 691.

A requirement for the position of playground director that university or college education, to be acceptable must be in universities or colleges on the accepted list of only the Association of American Universities or the Northwestern Association of Secondary and Higher Schools, and the denial of applications on the sole ground that they did not meet this requirement, was an unreasonable discrimination against graduates of schools accredited by other regional associations and an invalid exercise of the power of the civil service commission under this section. **Terry v. Civil Service Commission** (1952) 108 Cal. App. (2d) 861, 240 Pac. (2d) 691.

This section imposes as conditions precedent to taking an examination the requirements of §7—citizenship and one year's residence in San Francisco. **Dierson v. Civil Service Commission** (1941) 43 Cal. App. (2d) 53, 110 Pac. (2d) 513.

Qualifications and Tests

SECTION 145. All applicants for places in the classified service shall submit to tests which shall be competitive, provided, however, that no test in either entrance or promotional examinations shall be deemed to be competitive unless two or more persons shall participate, except that any such examination may be held for

one qualified applicant on recommendation of the civil service commission and approval by resolution of the board of supervisors, after a finding by the board that reasonable publicity of the proposed examination has been given by the civil service commission. Such tests shall be without charge to the applicants. The commission shall control all examinations and may employ suitable persons in or out of the public service to act as examiners. The tests may be written, oral, mechanical or physical, or any combination of them, practical in character and related to matters fairly to test the relative capacity of the applicants for the positions to be filled. The commission shall be the sole judge of the adequacy of the tests to rate the capacity of the applicants to perform service for the city and county. The commission may, for each examination, establish a passing mark or may determine the total number of persons who shall constitute the list of eligibles. The commission shall prepare from the returns of the examiners the list of eligibles, arranged in order of relative excellence. No question submitted to applicants shall refer to political or religious opinions or fraternal affiliations.

Applicants for entrance positions in the uniformed forces of the fire and police department shall be not less than twenty-one years of age, nor more than thirty-five years of age at the time of appointment and shall have the physical qualifications required for enlistment in the United States Army, Navy and Marine Corps.

Applicants for positions in the mechanical trades and occupations may, in the discretion of the commission, be rated solely on experience and physical qualifications which may be demonstrated by such evidence and in such manner as the commission may direct, and such applicants may be submitted to such further tests as the commission may require. Examinations of laborers shall relate only to physical qualifications and experience, and laborers establishing their fitness shall rank upon the register in order of priority of application.

The commission may remove all names from the list of eligibles after they have remained thereon for more than two years and all names thereon shall be removed at the expiration of four years. The commission may, however, provide in the scope-circular of any examination that the list of eligibles secured thereby shall

automatically expire at a date not less than two or more than four years after the adoption of such list.

Veterans with thirty days or more actual service, and widows of such veterans, who become eligible for appointment by attaining the passing mark in any entrance examination, shall be allowed an additional credit of five per cent in making up the list of eligibles secured by such examination. The term "veteran" as used in this section shall be taken to mean any person who has been mustered into, or served in, the Army, or enlisted in, or served in, the Navy or Marine Corps, of the United States, in time of war and received an honorable discharge or certificate of honorable active service. In the case of promotive examinations, when the passing mark has been attained, a credit of three per cent shall be allowed to veterans or to widows of such veterans when requested by such veterans or widows. When an eligible has secured a permanent appointment from a list of eligibles derived from an entrance examination in which he has been allowed additional credits of five per cent as herein provided, and has served the full probationary period therein as provided in this charter, such other additional credits of five per cent that have been allowed him on lists of eligibles derived from other entrance examinations shall be automatically cancelled, and his rank on such other list or lists revised to accord with his relative standing before such additional credits were added, and he shall not be allowed such additional credits in any other entrance examinations. If he has received a permanent appointment from a list of eligibles derived from a promotive examination in which he has requested and been allowed the additional credits of three per cent as herein provided, and has served the full probationary period therein as provided in this charter, such additional credits of three per cent that have been allowed him on lists of eligibles derived from other promotive examinations shall be automatically cancelled, and his rank on such other list or lists revised to accord with his relative standing before such additional credits were added, and he shall not be allowed such additional credits in any other promotive examinations. The civil service commission may, for services or employment specified by the commission, allow general or individual preference, but not less than ten percent, for entrance appointment of veterans who have suffered permanent disability in line of duty, provided that such disability would not prevent the proper

performance of the duties required under such service, or employment, and provided that such disability is of record in the United States Veterans' Bureau. [*Amended, 1940; 1948*]

Names of policemen placed on the eligible list under the old charter could be removed by the commission under this section of the new charter where the names were on the list for over two years and, since the power of the commission to strike off names after two years was identical under both charters, the commission did not give the new charter a retroactive interpretation in thus striking the names. **Jensen v. Civil Service Commission** (1935) 4 Cal. (2d) 334, 49 Pac. (2d) 283.

Under the provision (of former § 10, Art. XIII) that the commissioners "may strike off the names of candidates from the register after they have remained thereon more than two years," they could remove a name from the register after two years even though at various times the candidate had been given temporary or seasonal employment and was so employed at the time of the removal of his name. **Gilbert v. Civil Service Commission** (1923) 61 Cal. App. 459, 215 Pac. 97.

Under the provision of former § 10, Art. XIII, that the commission may strike off names of candidates from the register after two years, it may, upon no consideration other than that the list has been in force for two years, expunge it. **Mann v. Tracy** (1921) 185 Cal. 272, 196 Pac. 484.

The provision (of former § 4 of Art. XIII) that examinations shall be practical in their character was not violated by the commissioners in concluding that a person with the prescribed experience as a veterinarian might be as well qualified as one of actual experience to supervise the work of canners, curers, packers, and preparers of meat and to inspect meat and meat products on sale. **Pratt v. Rosenthal** (1919) 181 Cal. 158, 183 Pac. 542.

The provision of former § 10 of Art. XIII that the civil service commission may remove names from the list of eligibles after two years gave the commission its only authority to so remove names. **Cook v. Civil Service Commission of San Francisco** (1911) 160 Cal. 598, 117 Pac. 663.

Unless rules promulgated by the civil service commission under powers conferred on it by this section are wholly unreasonable, arbitrary or such an abuse of discretion that they transcend the purpose for which the power was conferred, a court will not substitute its opinion or discretion for that of the commission. **Cotter v. Wolff** (1948) 88 Cal. App. (2d) 376, 198 Pac. (2d) 950.

The provision of this section that applicants for positions in the uniformed forces of the fire and police departments "shall have the physical qualifications for enlistment" in the armed forces prescribes standards of minimum qualifications; and under the provision making the civil service commission "the sole judge of the adequacy of the tests," it may require additional qualifications with which the courts will not interfere in the absence of a showing that they are arbitrary, capricious, or unreasonable. **Cotter v. Wolff** (1948) 88 Cal. App. (2d) 376, 198 Pac. (2d) 950.

It was not the intent of the charter to have courts review the questions and answers of persons examined under this section in a competitive test devoid of prejudice, caprice and arbitrary action, practical in its character, given and determined in good faith by persons of a high degree of proficiency. **Mitchell v. McKevitt** (1932) 128 Cal. App. 458, 17 Pac. (2d) 789.

The decision of the civil service commission as to the correctness of the answers given in examination under this section is not subject to review by mandamus. *Mitchell v. McKevitt* (1932) 128 Cal. App. 458, 17 Pac. (2d) 789.

A person was not removed from the register of eligibles (provided under former § 7, Art. XIII) and did not become a permanent employee by virtue of appointments which were limited in time by the resolutions making them. *Rodrigue v. Rogers* (1906) 4 Cal. App. 257, 87 Pac. 563.

Cited in *Villain v. Civil Service Commission* (1941) 18 Cal. (2d) 851, 117 Pac. (2d) 880; *San Francisco v. Boyd* (1941) 17 Cal. (2d) 606, 110 Pac. (2d) 1036; *Terry v. Civil Service Commission of San Francisco* (1952) 108 Cal. App. (2d) 861, 240 Pac. (2d) 691; *Dierssen v. Civil Service Commission* (1941) 43 Cal. App. (2d) 53, 110 Pac. (2d) 513.

Time of War

SECTION 145.01. In the administration hereafter of the provisions of section 145 of this charter, the terms Army, Navy or Marine Corps of the United States shall be deemed to include the Army, the Air Corps, the Navy, the Marine Corps, and the Coast Guard of the United States, and for the purpose of determining whether any person was mustered into, or served in, the Army, the Air Corps, the Navy, the Marine Corps, or the Coast Guard of the United States, in time of war, the expression, time of war, shall include the following periods of time:

(a) The period of time from the commencement of a war as shown by any declaration of war of the Congress of the United States, or by any statute or resolution of the Congress a purpose of which is to declare in any manner the existence of a state of war, until the time of termination thereof by any truce, treaty of peace, cessation of hostilities, or otherwise.

(b) The period of time during which the United States is or has been engaged in active military operations against any foreign power, whether or not war has been formally declared.

(c) The period of time during which the United States is or has been assisting the United Nations or any nation or nations in accordance with existing treaty obligations, in active military operations against any foreign power, whether or not war has been formally declared. [*New section, 1953*]

Limited Tenture Appointments

SECTION 145.1. When in time of war declared by the Congress of the United States eligibles are not available for appointment

from registers established through the regular examination procedure as provided under section 145 hereof, the civil service commission may qualify applicants for wartime appointments to positions through informal and non-competitive tests. Such tests and appointments resulting therefrom shall be governed solely by the provisions of this section and by rule of the civil service commission adopted pursuant thereto and the tests shall be adequate in the judgment of the civil service commission to determine the capacity of applicants to perform the duties of the positions to be filled pending creation of lists of eligibles through the regular examination procedure as provided in section 145 hereof. Appointments made under the provisions of this section shall be designated "limited tenure appointments" and may continue only until registers of eligibles are established through the regular examination procedure provided in section 145 hereof but in no event to exceed six months beyond the cessation of hostilities. Limited tenure appointments may be terminated by the appointing officer at any time for lack of work or funds. Limited tenure appointments may be terminated by the appointing officer for good cause at any time with the approval of the civil service commission without reference to the procedures governing removals set forth in section 154 hereof. Persons serving under limited tenure appointments as in this section provided shall by reason of such service acquire no right or preference to permanent civil service status as defined elsewhere in this charter or by rule of the civil service commission which is conferred on persons completing probationary appointments made from lists of eligibles established through the regular examination procedures provided in section 145 of the charter. Service after January 1, 1951, under limited tenure appointment, by platform employees of the municipal railway, shall not be included in the calculation of service of such employees for the purpose of determining assignments of runs when such assignments are made on the basis of seniority of service.

Non-civil service appointments in the absence of civil service eligibles as provided in section 149 of this charter shall not be authorized if applicants qualified for limited tenure appointments are available. The civil service commission shall make every effort consistent with current conditions to maintain adequate registers of eligibles established through the regular examination pro-

cedure provided in section 145 hereof. If its annual appropriation is insufficient to meet the cost of the examinations required to establish registers of eligibles through the examination procedures set forth in section 145 hereof, or to qualify applicants for limited tenure appointments as herein provided, the commission shall report to the mayor the estimated cost thereof and the mayor shall request and the supervisors shall make supplemental appropriations therefor in the manner provided herein for supplemental appropriations.

The civil service commission shall adopt rules to carry out the provisions of this section and to govern the administration of limited tenure appointments.

In time of national emergency declared by the President of the United States or by the Congress or while any act authorizing compulsory military service or training is in effect, the provisions of this section may also be made operative upon recommendation of the civil service commission and approval of the board of supervisors by ordinance enacted by two-thirds vote of the board. Authority for limited tenure appointments, if established pursuant to the authority of this paragraph, shall cease six months after repeal by the board of supervisors of the ordinance which authorized such appointments. [*New section, 1943; amended, 1951*]

Where conductors, motormen and bus drivers appointed under this section were given credit for length of service under limited tenure employment in determining length of service upon which to base priority in the choice of carbarns, runs and vacation periods, this practice under the rules of the public utilities commission was within the discretion of the commission in the absence of a charter provision to the contrary. *Hart v. Landis* (1951) 103 Cal. App. (2d) 284, 229 Pac. (2d) 380.

Cited in *Corcoran v. San Francisco City and County Employees Retirement System* (1952) 114 Cal. App. (2d) 738, 251 Pac. (2d) 59; *Mullins v. Henderson* (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

Employment of Blind Persons

SECTION 145.02. Notwithstanding anything to the contrary in section 140 of this charter, or any other provision of the charter, it shall be the policy of the City and County of San Francisco, consistent with a policy of acquiring qualified personnel for the service of the city and county, to encourage the hiring of blind persons. It shall further be the policy of the City and County of San Francisco that no otherwise qualified blind person shall be discriminated against in examination, re-examination, appoint-

ment, reappointment, waiver of eligibility for appointment or reappointment, promotion or demotion in any class, subclass or position in the civil service unless eyesight is indispensable for the performance of the duties and responsibilities of the class, subclass or position. It shall be the duty of the commission to classify, and from time to time may reclassify, places of employment in the civil service the duties of which may be efficiently performed by qualified blind persons and to conduct appropriate examinations which will fairly test the capacity of blind persons as well as sighted persons to perform such duties. [*New section, 1955*]

Promotions

SECTION 146. Whenever it deems it to be practicable, the civil service commission shall provide for promotion in the service on the basis of such examinations and tests as the commission may deem appropriate, and shall, in addition, give consideration to ascertained merit and records of city and county service of applicants. The commission shall announce in the examination scope circular the next lower rank or ranks from which the promotion will be made. Except as specifically provided in other sections of this charter, all promotions in the uniform forces of the police and fire departments, respectively, shall be made from the next lower civil service rank attained by examinations, as herein set forth, giving consideration also to meritorious public service and seniority of service and a clean record in the respective departments. All such promotive examinations in the police and fire departments shall be entirely of a written character, and all questions asked or problems given in said examinations shall pertain to matters concerning the duties of members of the department for which the examination is held.

Fifteen per cent of the total credits obtainable under any promotive examination for eligibles for the police or fire department shall be allowed for seniority of service, which said credits shall be distributed as follows:

Examinations for Eligibles for the Police Department

(a) For Promotion to the Rank of Sergeant of Police:

One per cent of the total credits allowed for the entire examination shall be allowed for each year of service in the department

until a total of fifteen per cent of the credits of the entire examination is reached;

(b) For Promotion to the Rank of Lieutenant of Police:

Six-tenths of one per cent of the total credits allowed for the entire examination shall be allowed for each year of service in the department until a total of nine per cent of said total credits of the entire examination is reached, and in addition thereto six-tenths of one per cent of the total credits allowed for the entire examination shall be allowed for each year of service in the rank of Corporal or sergeant until a total of six per cent of the credits of the entire examination is reached.

(c) For Promotion to the Rank of Captain of Police:

Forty-five hundredths of one per cent of the total credits allowed for the entire examination shall be allowed for each year of service in the department until a total of nine per cent of said total credits for said examination is reached, and in addition thereto six-tenths of one per cent of the total credits allowed for the entire examination shall be allowed for each year of service in the rank of lieutenant until a total of six per cent of the credits of the entire examination is reached.

(d) In addition to the foregoing credits for seniority, six per cent of the total credits allowed for said examination shall be allowed each applicant for a clean record in the department. All members of the department who have performed acts of meritorious public service and have not heretofore received credit for such meritorious public service in a promotional examination and all members of the department who shall perform acts of meritorious public service prior to the effective date of this amendment shall be allowed in addition a maximum of four credits for said examination according to the judgment of the commission. Credits for meritorious public service, in a promotional examination within the police department shall not be allowed by the civil service commission except as herein provided.

Examination for Eligibles for the Fire Department

Fifteen per cent of the total credits allowed for any promotive examination shall be allowed for seniority of service, which said credits shall be distributed as follows:

(e) For Promotion to the Rank of Lieutenant in the Fire Department:

One per cent of the total credits allowed for the entire examination shall be allowed for each year of service in the fire department until a maximum of fifteen per cent is reached;

(f) For Promotion to the Rank of Captain in the Fire Department:

Six-tenths of one percent of the total credits allowed for the entire examination shall be allowed for each year of service in the fire department until a total of nine per cent is reached; and in addition thereto there shall be allowed six-tenths of one per cent of the total credits allowed for the entire examination for each year of service in the rank of lieutenant until a total of six per cent of the credits of the entire examination is reached.

(g) For Promotion to all Ranks Above Captain in the Fire Department:

Forty-five hundredths of one per cent of the total credits allowed for the entire examination shall be allowed for each year of service in the fire department until a total of nine per cent of said credits is reached, and in addition thereto there shall be allowed six-tenths of one per cent of the total credits allowed for the entire examination for each year of service as an officer in the rank held by the applicant at the time of the examination, until a total of six per cent of the credits of the entire examination is reached.

(h) In addition to the foregoing credits for seniority six per cent of the total credits allowed for said examinations shall be allowed to each applicant for a clean record in the department.

(i) In promotional examinations in the police and fire departments, seniority of service and a clean record in the respective departments shall be added to the credit obtained by the applicant in the written portion of said examination, and shall be taken into consideration by the commission in determining his passing mark and his place upon the list of eligibles.

(j) In computing the credits for service in both the police department and the fire department, fractional parts of the year shall not be considered. [*Amended, 1937; 1941; 1954*]

In allowing consideration for meritorious service, this section makes credit for such service an integral part of the written examination, and

such service is to be credited as of the date the examination is actually held in the absence of a valid rule or regulation prescribing a different date. **Conroy v. Wolff** (1950) 34 Cal. (2d) 745, 214 Pac. (2d) 529.

The provision requiring the commission "whenever it deems it practicable" to give promotional and not open examinations embodies one of the fundamental concepts of a sound civil service system. **Allen v. McKinley** (1941) 18 Cal. (2d) 697, 117 Pac. (2d) 342.

The requirement of this section that promotional examinations shall be held when practicable is intended to promote efficiency among public employees. **Allen v. McKinley** (1941) 18 Cal. (2d) 697, 117 Pac. (2d) 342.

While this section makes it the duty of the commission to provide for a promotional examination whenever "it deems it to be practicable" whereas the old charter provided for such examination "whenever practicable," the two sections should be construed to mean substantially the same thing, that is, that under the old section as under the new, the question as to whether a promotional examination is practicable is confined to the limited discretion of the commission. **Allen v. McKinley** (1941) 18 Cal. (2d) 697, 117 Pac. (2d) 342.

Under this section promotional examinations, except for those in the lowest ranks, are required to be held unless they are not practicable, and in determining whether or not they are practicable the commission does not possess unlimited discretion. **Allen v. McKinley** (1941) 18 Cal. (2d) 697, 117 Pac. (2d) 342.

The requirement of this section that the commission, where it deems it practicable, shall provide for promotional examinations is mandatory, and, if there are qualified persons eligible to such examination, the commission can only ascertain if it is impracticable to give a promotional examination after those eligible have been given such examination. **Allen v. McKinley** (1941) 18 Cal. (2d) 697, 117 Pac. (2d) 342.

In giving an open and original examination, instead of a promotional one, for creating an eligible list for the position of adjuster in the tax collector's office, the civil service commission abused its discretion where there were a large number of persons in the service fully qualified to take the examination for the eligible list for that position. **Allen v. McKinley** (1941) 18 Cal. (2d) 697, 117 Pac. (2d) 342.

In setting up an open examination rather than a promotional examination for the position of maintenance chief at the San Francisco airport, the civil service commission did not abuse its discretion under this section. **Amerio v. San Francisco** (1954) 126 Cal. App. (2d) 379, 271 Pac. (2d) 996.

In a mandamus proceeding to compel the civil service commission to place the name of a police officer on the eligible list for promotion, brought following the allegedly erroneous denial of any points allowable for a clean record, the limit of the trial court's power, if it finds the petitioner to be entitled to relief, is to direct the commission to exercise its discretion in determining whether the officer is entitled to any of such points, and, if so, what part. **Conroy v. Civil Service Commission** (1946) 75 Cal. App. (2d) 450, 171 Pac. (2d) 500.

It was not an abuse of discretion for the civil service commission to declare that municipal railway conductors and motormen as well as inspectors were within "the next lower rank or ranks" eligible to take a promotional examination under this section to create an eligible list

for the rank of special instructor where there were many overlapping salary ranges, and at least in the lower grades there was no clear cut priority of rank and therefore no precise method, without the exercise of discretion, for the determination. **Shannon v. McKinley** (1944) 62 Cal. App. (2d) 169, 144 Pac. (2d) 433.

Under the provision of this section that "The commission shall announce . . . the next lower rank or ranks from which the promotion will be made," the civil service commission has a wide discretion in determining the priority in ranks and in further determining the ranks falling in the category of the "next lower rank or ranks." And its determination will not be interfered with unless it clearly appears that the commission has abused its discretion. **Shannon v. McKinley** (1944) 62 Cal. App. (2d) 169, 144 Pac. (2d) 433.

Cited in **Viner v. Civil Service Commission** (1943) 59 Cal. App. (2d) 458, 139 Pac. (2d) 88; **San Francisco v. Boyd** (1941) 17 Cal. (2d) 606, 110 Pac. (2d) 1036.

**Substitute Promotional Examinations for Persons Returning From
Authorized Military Leave**

SECTION 146.1. Employees under permanent civil service appointment who, because of absence on duly authorized military leave after June 27, 1950, did not participate in a promotional examination held after June 27, 1950 and during time of war as defined in section 145.01 of this charter, and in which examination the employee would have been otherwise eligible to compete had the war not intervened, and which examination is hereinafter referred to as the original promotional examination, shall after abridgment of military leave, have the right to participate in a similar promotional examination. Provided, that persons and employees who were on entrance or promotive eligible lists, shall, for the purpose of this amendment, be deemed to be appointees in their classifications from the time their names were reached for permanent certification while in the military service.

In order to qualify for participation in a similar promotional examination under the provisions of this section, such employee who desires to participate therein must make application in writing to the civil service commission within thirty days after the abridgment of his military leave, or within thirty days after the effective date of this amendment. Failure to file such written request to participate in a similar promotional examination as herein provided shall be deemed a waiver of all rights of the employee to participate in such similar promotional examination.

The civil service commission shall arrange to hold such similar promotional examination within a reasonable time after employees eligible to request participation in any such similar promotional examination under the provisions of this section have indicated their desire to so participate, or have waived their right to participate, as herein provided.

The civil service commission shall be the sole judge of the adequacy of such similar promotional examination. If the employee obtains in the similar promotional examination a score rating equal to or more than the minimum passing mark established by the civil service commission for inclusion on the list of eligibles resulting from the original promotional examination, his name shall thereupon be entered on the eligible list resulting from the original promotional examination in accordance with the relative excellence obtained by all the qualified participants in the orig-

inal and similar promotional examinations. Such employees shall be eligible for appointment from such list of eligibles in accordance with civil service rules to any vacancy thereafter occurring, and subject to satisfactory completion of a probationary period as provided in section 148 of this charter for a period of four years after the date on which their name is entered on the eligible list and before eligibles procuring standing through examinations held subsequent to the original promotional examination.

If it is determined by the civil service commission that the name of such person would have been reached for permanent appointment from the list of eligibles established as a result of the original promotional examination during his term of military service had the name of such person appeared thereon, then such employee, upon appointment to a permanent position as herein provided, shall be granted seniority in such appointment from the date his name would have been reached had his name appeared thereon, but such seniority shall be used only for the purpose of determining salary increments and calculating city and county service credits in other promotional examinations held subsequent to the similar promotional examination herein authorized. For all other purposes, seniority of service shall date from the date of appointment as a result of qualifying in the similar promotional examination as herein authorized.

Such employees who qualify for appointment as a result of a similar promotional examination as herein provided, and who are appointed to permanent positions, as herein provided, shall be permitted to participate in other promotional examinations for which they are otherwise eligible, while serving under probationary appointment in the position to which appointed as a result of the similar promotional examination, provided that certification from lists of eligibles established from such other examinations shall not be made until the employee has satisfactorily completed the aforesaid probationary appointment.

The civil service commission shall adopt rules to govern the administration of similar promotional examinations herein authorized, and appointments and other matters resulting therefrom. *[New section, 1947; amended, 1948; 1955]*

The declaration of cessation of hostilities of World War II, issued by the President of the United States on December 31, 1946, was not, and there has not been, a proclamation of peace or termination of the national emergency within the meaning of this section. *Lynch v. San Francisco* (Apr. 17, 1953) 117 Cal. App. (2d) 347, 255 Pac. (2d) 827.

No Aid, Hindrance, Fraud or Collusion Permitted

SECTION 147. No person or officer shall, by himself or in cooperation with other persons, defeat, deceive or obstruct any person in respect to his or her right of examination; or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined hereunder, or aid in so doing; or make any false representations concerning the same, or concerning the person examined; or furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person of being appointed, employed or promoted.

Any eligible securing standing on a list by fraud, concealment of fact or violation of commission rules shall be removed from such list and if certified or assigned to a position shall be removed therefrom.

The provision (of former § 18 of Art XIII) prohibiting the furnishing of special or secret information was not violated by the civil service commission's notice that it had limited supply of the regulations of the board of health and would furnish them to examination applicants so long as the supply lasted. **Pratt v. Rosenthal** (1919, 181 Cal. 158, 184 Pac. 956.

Cited in **Dierssen v. Civil Service Commission** (1941) 43 Cal. App. (2) 53, 110 Pac. (2d) 513.

Inspection of Civil Service Examination Papers

SECTION 147.1. After the civil service commission has prepared and published or posted a list of eligibles, arranged in order of relative excellence, as the result of any examination held by said commission, said list shall not be finally approved for two weeks after the date of the publication or posting of said list, during which time all examination papers, questions and answers, and all marks and grades given on any test given in said examination shall be open to public inspection and copying by any citizen, providing that the identity of the examiner giving any mark or grade in an oral test shall not be disclosed; and provided further that the commission may require the payment of a fee of not more than one dollar (\$1) for the inspection of all of the papers relating to the examination of any one person participating in said examination; and provided further that a participant may examine his own examination papers without charge. The civil service commission shall have power to correct any error which in its judg-

ment may have occurred in the rating of any participant in said examination, and to alter said published or posted list of eligibles and to make changes accordingly therein which in the opinion of said commission may be justified by any re-examination of said papers, questions, answers, marks or grades given in said examination; provided that said changes shall be made within a period of not more than sixty (60) days after the date of the publication or posting of said list. [*New section, 1938*]

Requisition, Certification and Appointment

SECTION 148. Whenever a position controlled by the civil service provisions of this charter is to be filled, the appointing officer shall make a requisition to the civil service commission for a person to fill it. Thereupon, the commission shall certify to the appointing officer the name and address of the person standing highest on the list of eligibles for such position. In case the position is promotive, the commission shall certify the name of the person standing highest on such list. In making such certification, sex shall be disregarded except when a statute, a rule of the commission or the appointing officer specifies sex.

From the requisition of the appointing officer or otherwise, the commission shall determine whether the position is, in character, temporary, seasonal or permanent, and shall notify the candidate in accordance therewith to the end that the candidate may have knowledge of the probable duration of employment. The commission shall provide for such waiver of temporary or seasonal employment as it may deem just to candidates.

Any appointment to a position declared permanent by the civil service commission shall be on probation for a period of six months, provided that the probationary period for entrance positions in the uniform rank of the police department shall be for one year. At any time during the probationary period the appointing officer may terminate the appointment upon giving written notice of such termination to the employees and to the civil service commission specifying the reasons for such termination. Except in the case of uniformed members of the police and fire departments the civil service commission shall inquire into the circumstances. If the appointment resulted from an entrance examination the commission may declare such person dismissed or may

return the name to the list of eligibles for certification to another department. If the appointment resulted from a promotional examination the employee shall have the right of appeal and hearing before the civil service commission. The commission shall render a decision within thirty days after receipt of the notice of termination and (a) may declare such person dismissed; or (b) order such person reinstated in his position without prejudice, and the commission may in its discretion order that the employee be paid salary from time of the termination of his appointment; or (c) order the return of such person to the position from which he was promoted. The decision of the commission shall be final. Immediately prior to the expiration of the probationary period the appointing officer shall report to the civil service commission as to the competence of the probationer for the position, and if competent, shall recommend permanent appointment. [*Amended, 1937; 1946*]

The duty imposed upon the commission by this section to certify the name of the person ranking highest on the current list of eligibles for the position to be filled cannot be circumvented by a rule of the commission. **Ballf v. Civil Service Commission** (1941) 43 Cal. App. (2d) 211, 110 Pac. (2d) 478.

This section imposes upon the commission the imperative duty to certify the name of the person standing highest on the list of eligibles, and, where such person holds a position of a classification different from that requisitioned, the commission is not justified in failing to certify his name by its own rule purporting to confer upon it discretionary power in respect to transfers to permanent positions of the same classification under different appointing officers. **Ballf v. Civil Service Commission** (1941) 43 Cal. App. (2d) 211, 110 Pac. (2d) 478.

A judgment for petitioner in mandamus compelling the civil service commission to certify his name to the board of supervisors for the position of general clerk-stenographer is erroneous in so far as it attempts to relieve petitioner of the necessity of passing a probationary period in the new position. **Ballf v. Civil Service Commission** (1941) 43 Cal. App. (2d) 211, 110 Pac. (2d) 478.

Where appointment for temporary employment was made under the former charter in a position designated as temporary, followed by discharge and immediate re-appointment, the appointment became permanent under former charter § 10, Art. XIII; the fact that the re-appointment was made after the effective date of the present charter under which, by this section, the commission was granted the power to determine the duration of appointments was immaterial. **Doerr v. Civil Service Commission** (1937) 21 Cal. App. (2d) 173, 68 Pac. (2d) 731.

Under its rule-making power (granted by former charter § 3, Art. XIII) the civil service commission had no power to adopt a rule whereby positions which were neither temporary in fact nor temporary by the law of their creation, but were in fact permanent, could be designated temporary. **McGilllicuddy v. Civil Service Commission** (1933) 133 Cal. App. 782, 24 Pac. (2d) 942.

Under the provision (of former charter § 10, Art. XIII) that an appointment was deemed complete if the employee was not discharged prior to expiration of the probation period, appointments to positions which came to exist in a reasonable degree of continuity and permanency became permanent although they were designated as temporary in a succession of re-appointments subsequent to the probation period. **McGillivuddy v. Civil Service Commission** (1933) 133 Cal. App. 782, 24 Pac. (2d) 942.

A person was not removed from the register of eligibles (provided under former § 7, Art XIII) and did not become a permanent employee by virtue of appointments which were limited in time by the resolutions making them. **Rodrigue v. Rogers** (1906) 4 Cal. App. 257, 87 Pac. 563.

Cited in: **Villain v. Civil Service Commission** (1941) 18 Cal. (2d) 851, 117 Pac. (2d) 880; **San Francisco v. Boyd**, (1941) 17 Cal. (2d) 606, 110 Pac. (2d) 1036; **Randall v. Wolff** (1950) 95 Cal. App. (2d) 795, 214 Pac. (2d) 58.

Corresponding provision (§ 3, § 10, Art. XIII) of former charter cited in **Rodgers v. Board of Public Works** (1929) 208 Cal. 291, 281 Pac. 64.

Emergency Appointments

SECTION 149. When no list of eligibles exists or no eligible is available on an existing list for a position in the class requisitioned by the appointing officer, and immediate service in the position is required by the appointing officer and another list exists which is deemed by the commission to be suitable to provide temporarily the service desired, the commission shall certify for civil service temporary appointment an eligible from such list; if no such other list deemed by the commission to be suitable exists, the commission pursuant to its rules may authorize the appointing officer to make a non-civil service or emergency appointment thereto for a period not exceeding ninety working days. Such non-civil service or emergency appointment, however, shall cease prior to the expiration of such ninety working days at the time a civil service eligible reports for duty as provided in section 148 of the charter.

If a list of eligibles exists for the position requisitioned, but immediate service is deemed necessary by the appointing officer pending the time an eligible from such list is certified and reports for duty as provided in section 148 of the charter, the commission may authorize the appointing officer to make a non-civil service or emergency appointment thereto for a period not exceeding thirty working days. Such non-civil service or emergency appointment, however, shall cease prior to the expiration of such thirty working days at the time a civil service eligible reports for duty as provided in section 148 of this charter.

No person shall be compensated under any non-civil service or emergency appointment or appointments as authorized under the provisions of the foregoing paragraphs of this section for a period exceeding ninety working days in any fiscal or calendar year, and no claim or warrant therefor shall be approved, allowed or paid for any compensation in excess of such ninety working days in any fiscal or calendar year.

If no eligibles are available for appointment to a permanent position in the class requested by the appointing officer the commission shall immediately hold an examination and establish an eligible list for such position. If its annual appropriation is insufficient to meet the cost of said examination, it shall report to the mayor the estimated cost thereof, and the mayor shall request and the supervisors shall make supplemental appropriation therefor in the manner provided herein for supplemental appropriations.

Whenever the board of supervisors by a three-fourths vote of all its members shall declare that an unemployment emergency exists throughout the city and county because of extraordinary conditions due to unemployment, and shall fix the period during which such unemployment emergency shall be officially recognized, the civil service commission shall then have power to exempt from civil service examinations during such emergency period all places of employment that may be created by special appropriation to relieve such unemployment emergency; provided, that no action shall be taken under the provisions of this paragraph that will adversely affect the rights of civil service eligibles for employment in the usual temporary and permanent positions that are provided for in the annual salary ordinance. The civil service commission shall adopt special rules for the government of appointments to the emergency positions that may be created under the authority of this paragraph. [*Amended, 1933; 1953*]

An assistant who is appointed to temporarily fill a vacancy in a supervisory position and given the entrance salary provided by ordinance for persons appointed to fill vacancies cannot, whether his appointment rests in this section or § 141, claim the salary attached to the superior position. **Dunn v. Civil Service Commission** (1935) 3 Cal. App. (2d) 554, 40 Pac. (2d) 310.

Former charter, with corresponding or similar provisions, cited: § 10, Art XIII, temporary appointments to meet extraordinary exigencies, **McGillicuddy v. Civil Service Commission** (1933) 133 Cal. App. 782, 24 Pac. (2d) 942.

Verification of Payrolls

SECTION 150. All personal services shall be paid by warrants on the basis of a claim, bill, timeroll or payroll approved by the head of the department or office employing such service. The claims, bills or payrolls, hereinafter designated as payrolls, for salaries, wages or compensation for personal services of all officers, assistants and employees of every class or description, without regard to the name or title by which they are known, for each department or office of the city and county shall be transmitted to the civil service commission before presentation to the controller.

The secretary of the commission shall examine and approve such payroll for all persons legally appointed to or employed in positions legally established under this charter. The payrolls thus approved, with notation of any item thereof disapproved, shall then be certified by the secretary of the commission and transmitted by him to the controller. The controller shall not approve and the treasurer shall not pay any claim for personal services, or pay check or warrant for salary, wages or compensation unless the same shall have been approved by the said secretary.

For the purpose of the verification of claims, bills, timerolls, or payrolls, contractual services represented by teams or trucks hired by any department head or other officer of the city and county shall be considered in the same manner as personal service items and shall be included on payrolls as approved by said department heads or other officers, and shall be subject to examination and approval by the secretary of the civil service commission and the controller in the same manner as payments for personal services.

The salary, wage or other compensation fixed for each officer and employee in, or as provided by this charter, shall be in full compensation for all services rendered, and every officer and employee shall pay all fees and other moneys received by him, in the course of his office or employment, into the city and county treasury except as provided in section 32 of this charter.

No officer or employee shall be paid for a greater time than that covered by his actual service; provided, however, that the basic amount of salary, wage or other compensation, excluding premium pay differentials of any type whatsoever of any officer or employee who may be called upon for jury service in any municipi-

pal, state or federal court, shall not be diminished during the term of such jury service. There shall, however, be deducted from the amount of basic salary, wage or other compensation, excluding any pay premium differentials of any type whatsoever payable by the city and county to the officer or employee for such period as such officer or employee may be absent on account of jury service, any amounts which the officer or employee may receive on account of such jury service. Any absence from regular duty or employment while on jury duty shall be indicated on timerolls by an appropriate symbol to be designated by the controller. [*Amended, 1953*]

This section, providing that no officer or employee shall be paid for a greater time than that covered by his actual service, does not bar rights to vacation pay under § 151.5 to employees separated from employment prior to the effective date of that section, for the intent to make such payment is clear from § 151.5, and that section, being later in time, would control this earlier provision. **Tevis v. City and County of San Francisco** (1954) 43 Cal. (2d) 190, 272 Pac. (2d) 757.

Computing wages of municipal railway employees under § 151. 3 on the basis of wage schedules of other street railways in California does not require consideration of the guaranteed minimum hours provisions of those schedules, for under this section (§ 150) payments of wages for such guaranteed minimum hours may not be made to an employee who did not work for that amount of time. It would be necessary, in order to pay each employee for a minimum of eight hours, to revise the entire operating schedule to provide for such hours, and to revise it continually and at great effort and expense, a result not intended by the people in adopting the charter section. **Gowenlock v. Turner** (1954) 42 Cal. (2d) 296, 267 Pac. (2d) 310.

In determining the question of the personal liability of the controller for the allowance, and the treasurer for the payment, of salary claims illegally approved by an appointing officer, this section and § 73 must be read with § 86. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

In allowing and paying salary claims, the controller and the treasurer are not required under § 86, when read together with this section and § 73, to pass upon the legality of the claimant's appointment; they are simply required to see to it that payments are not made unless they comply with procedure set up in the charter; they are not required to go beyond the certifications of the department head and the secretary of the commission as to the legality of the appointment. **Galli v. Brown** (1952) 110 Cal. App. (2d) 764, 243 Pac. (2d) 920.

Cited in: **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **Scannel v. Murphy** (1947) 82 Cal. App. (2d) 844, 187 Pac. (2d) 790.

Standardization of Compensation

SECTION 151. The board of supervisors shall have power and it shall be its duty to fix by ordinance from time to time, as in this section provided, all salaries, wages and compensations of every

kind and nature, except pension or retirement allowances, for the positions, or places of employment, of all officers and employees of all departments, offices, boards and commissions of the city and county in all cases where such compensations are paid by the city and county.

Compensations specified in this charter shall not be subject to the provisions of this section. Compensations of the teaching and other technical forces of the school department and employees of the Steinhart Aquarium and law library departments, construction employees engaged outside of the city and county, part-time employees, and inmate and institutional help receiving less than fifty dollars (\$50) per month, shall be fixed by the department head in charge thereof, with the approval of the board or commission, if any, in charge of the department concerned and subject to the budget and appropriation provisions of this charter; provided that part-time employees shall be recorded as such by a department head, only with the approval of the civil service commission and, when so recorded, shall be noted as part-time on pay-rolls, budget estimates, salary ordinance and similar documents.

In fixing schedules of compensation as in this section provided, the civil service commission shall prepare and submit to the board of supervisors and the board shall adopt a schedule of compensations which shall include all classifications, positions and places of employment the wages or salaries for which are subject to the provisions of this section; provided, that the civil service commission shall from time to time prepare and submit to the board of supervisors and the board shall adopt amendments to the schedule of compensations which are necessary to cover any new classifications added by the civil service commission. Under the schedules of compensation recommended by the civil service commission and adopted by the board of supervisors as herein provided, like compensation shall be paid for like service, based upon the classification as provided in section 141 of the charter, and for those classifications of employment in which the practice is customary, the proposed schedules of compensation shall provide for minima, intermediate, and maxima salaries and for a method of advancing the salaries of employees from the minimum to the intermediate and to the maximum with due regard to seniority of service. The compensations fixed as herein provided shall be in accord with the generally prevailing rates of wages for like service and working

conditions in private employment or in other comparable governmental organizations in this state; provided, that for specialized services which are peculiar to the municipal service and not duplicated elsewhere in private or other governmental organizations in this state, the commission shall recommend and the board of supervisors shall fix a compensation which shall be in accord with the wages paid in private employment or other governmental organizations in the state for the nearest comparable service and working conditions; and provided further that if the civil service commission determines on the basis of facts and data collected as hereinafter provided that the rates generally prevailing for a particular service in private employment or in other governmental organizations are inconsistent with the rates generally prevailing in private employment or other governmental organizations for services requiring generally comparable training and experience, the commission shall set forth these data in its official records and shall recommend and the board of supervisors shall fix a compensation for such service that shall be consistent with the compensations fixed by the board of supervisors for other services requiring generally comparable training and experience; and provided further that the minimum compensation fixed for full time employments subject to the civil service provisions of this charter shall be not less than one hundred and six dollars (\$106) per month.

The proposed schedules of compensation or any amendments thereto shall be recommended by the civil service commission solely on the basis of facts and data obtained in a comprehensive investigation and survey concerning wages paid in private employment for like service and working conditions or in other governmental organizations in this state. The commission shall set forth in the official records of its proceedings all of the data thus obtained and on the basis of such data the commission shall set forth in its official records an order making its findings as to what is the generally prevailing rate of pay for each class of employment in the municipal service as herein provided, and shall recommend a rate of pay for each such classification in accordance therewith. The proposed schedules of compensation recommended by the civil service commission shall be transmitted to the board of supervisors, together with a compilation of a summary of the data obtained and considered by the civil service commission and a comparison showing existing schedules. Before being presented to

the board of supervisors for consideration, the proposed schedules and a comparison with existing schedules shall be published once a week for two weeks.

The board of supervisors may approve, amend or reject the schedule of compensations proposed by the civil service commission; provided, that before making any amendment thereto the data considered by the board of supervisors as warranting such amendment shall be transmitted to the civil service commission for review and analysis and the commission shall make a report thereon to the board of supervisors, together with a report as to what other changes, and the cost thereof such proposed amendment would require to maintain an equitable relationship with other rates in such schedule.

Where any compensation paid on January 1st, 1931, is higher than the standard compensation fixed as provided in this section for such position or employment, said compensation shall be continued to the incumbent of such position as long as he legally holds said position, and department heads, in cooperation with the civil service commission where said commission has jurisdiction, shall continuously offer all possible opportunities to said incumbents to assume duties and responsibilities in higher classifications consistent with the higher rates of compensation hereby continued. The salaries and wages paid to employees whose compensations are subject to the provisions of this section shall be those fixed in the schedule of compensations adopted by the board of supervisors as herein provided and in accord with the provisions of the ordinance of the board of supervisors adopting the said schedule, and the compensations set forth in the budget estimates, and the annual salary ordinance and appropriations therefor shall be in accord therewith.

Not later than January 15th, 1944, and every five years thereafter and more often if in the judgment of the civil service commission or the board of supervisors economic conditions have changed to the extent that revision of existing schedules may be warranted in order to reflect current prevailing conditions, the civil service commission shall prepare and submit to the board of supervisors a schedule of compensations as in this section provided. A schedule of compensations or amendments thereto as provided herein which is adopted by the board of supervisors on or before April 1st of any year shall become effective at the beginning

of the next succeeding fiscal year and a schedule of compensations or amendments thereto adopted by the board of supervisors after April 1st of any year shall not become effective until the beginning of the second succeeding fiscal year. The board of supervisors shall appropriate twelve thousand five hundred dollars (\$12,500) to the civil service commission to be known as the salary survey fund and to be used exclusively for defraying the cost of surveys of wages in private employment and in other governmental jurisdictions and making reports and recommendations thereon and publication thereof as herein provided. No expenditures shall be made therefrom except on authorization of board of supervisors. In the event of the expenditure of any of said funds, the board of supervisors in the next succeeding annual budget shall appropriate a sum sufficient to reimburse said salary survey fund.

Where compensations for services commonly paid on an hourly or a per diem basis are established on a weekly, semi-monthly or monthly salary basis for city and county service, such salary shall be based on the prevailing hourly or per diem rate, where this can be established, and the application thereto of the normal or average hours or days of actual working time, in the city and county service, including an allowance for annual vacation. [*Amended, 1943; 1949*], *effective January 1, 1951*]

The board of supervisors, in the salary standardization process, engages in a discretionary fact finding process which is legislative in character and therefore within the referendum process. **Collins v. San Francisco** (1952) 112 Cal. App. (2d) 719, 247 Pac. (2d) 362.

A salary standardization ordinance is a proper subject for referendum, although § 179 excludes from referendum those ordinances relative to purely administrative matters, and includes those involving legislative matters, since the board of supervisors in fixing salaries under this section acts in a legislative capacity. **Collins v. San Francisco** (1952) 112 Cal. App. (2d) 719, 247 Pac. (2d) 362.

In determining whether the method for fixing rates of pay for city employees under this section applies, or whether such rates are to be fixed in conformance with collective bargaining agreements as provided in § 151.3, the work actually being performed by the employee is the governing factor, not the classification under they are hired. **Randall v. Wolff** (1950) 95 Cal. App. (2d) 795, 214 Pac. (2d) 58.

During an emergency this section may be superseded by emergency action by the mayor under § 25. **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

§ 151-151.1

Emergency proclamations of the mayor under § 25 fixing the compensation of employees of a newly acquired street railway were not repealed by standardization and annual salary ordinances subsequently adopted under this section where they did not deal with the actual emergency, but were based on normal pay and were enacted as part of the ordinary financial machinery of the city, to become effective only after the emergency had passed. **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

The provision of this section that the compensation for municipal employees "shall be in accord with the generally prevailing rate of wages for like service and working conditions in private employment or in other comparable governmental organizations in this state," does not require that the rates of wages recommended by the civil service commission or fixed by the board of supervisors be identical with or not higher than the generally prevailing rates, but rather that there be a reasonable or just correspondence between the rates established and those elsewhere prevailing, i.e., that they be in harmony with and substantially conform to such other rates. **San Francisco v. Boyd** (1943) 22 Cal. (2d) 685, 140 Pac. (2d) 666.

Annual vacations for municipal employees in the crafts and groups embraced by the provisions of § 151.3 relating to collective bargaining agreements were to be in accordance with those agreements and not as allowed municipal employees under the former provisions of this section (§151). **Adams v. San Francisco** (1949) 94 Cal. App. (2d) 586, 211 Pac. (2d) 368; 212 Pac. (2d) 272.

There was a substantial compliance with the procedural requirements of this section where the civil service commission made a survey of rates of wages paid in like employment for like service and where, although the commission did not set forth in the official record of its proceedings all of the data obtained in its investigation or set forth an order making its findings as to the general prevailing rates, it did in formulating its recommendations have before it and consider all the facts collected in the survey, and it set forth a summary of wage recommendations and supporting data, which listed the present rate paid by the municipality, the prevailing union wages and appropriate prevailing wage for all the designated employees. **San Francisco v. Boyd** (1943) 22 Cal. (2d) 685, 140 Pac. (2d) 666.

Cited in **Tevis v. City and County of San Francisco** (1954) 43 Cal. (2d) 190, 272 Pac. (2d) 757; **Gowenlock v. Turner** (1954) 42 Cal. (2d) 296, 267 Pac. (2d) 310.

Butler v. San Francisco (1951) 104 Cal. App. (2d) 126, 231 Pac. (2d) 75; **Adams v. Wolff** (1948) 84 Cal. App. (2d) 435, 190 Pac. (2d) 665; **Scannel v. Murphy** (1947) 82 Cal. App. (2d) 844, 187 Pac. (2d) 790; **Kennedy v. Ross** (1946) 28 Cal. (2d) 569, 170 Pac. (2d) 904; **Francis v. Leavy** (1933) 131 Cal. App. 620, 21 Pac. (2d) 979 (salary standardization); **King v. Leavy** (1932) 124 Cal. App. 422, 12 Pac. (2d) 661. (fixing schedules of compensation; action by board of supervisors; power and duty of board of supervisors to fix compensation; per diem compensation; increases pending salary standards).

Officers Subject to Salary Standardization

SECTION 151.1. Notwithstanding any other provisions or limitations of this charter, the compensations of all elective and appointive officers of the city and county, except members of the board of supervisors and of other boards and commissions, the

superintendent of schools and members of the several ranks of the police and fire departments, shall be fixed in accordance with the salary standardization provisions of this charter. [*New section, 1946; amended, 1947*]

SECTION 151.2. *No section for this number.*

Basis of Standardization of Compensation of Certain Employees

SECTION 151.3. Notwithstanding any of the provisions of section 151 or any other provisions of this charter, whenever any groups or crafts establish a rate of pay for such groups or crafts through collective bargaining agreements with employers employing such groups or crafts, and such rate is recognized and paid throughout the industry and the establishments employing such groups or crafts in San Francisco and the civil service commission shall certify that such rate is generally prevailing for such groups or crafts in private employment in San Francisco pursuant to collective bargaining agreements, the board of supervisors shall have the power and it shall be its duty to fix such rate of pay as the compensations for such groups and crafts engaged in the city and county service. The rate of pay so fixed by the board of supervisors shall be determined on the basis of rates of pay certified by the civil service commission on or prior to April 1st of each year and shall be effective July 1st following; provided, that the civil service commission shall review all such agreements as of July 1st of each year and certify to the board of supervisors on or before the second Monday of July any modifications in rates of pay established thereunder for such crafts or groups as herein provided. The board of supervisors shall thereupon revise the rates of pay for such crafts or groups accordingly and the said revised rates of pay so fixed shall be effective from July 1st of the fiscal year in which such revisions are determined.

Should the budget estimates of the several departments be filed with the controller or transmitted to the mayor before any such report of said civil service commission is received by the board of supervisors, the head of each department affected by such report may amend its budget estimate to comply with the provisions of such report.

§ 151.3

Notwithstanding the provisions of section 151 or any other provisions of this charter the wages of the various classifications of employment of platform employees and coach or bus operators of the municipal railway shall be determined and fixed, annually as follows:

(a) For the fiscal year beginning July 1, 1957, the basic hourly rate of pay shall be established at \$2.244 per hour, and for the fiscal year beginning July 1, 1958, the basic hourly rate of pay shall be established at \$2.448 per hour.

(b) On or before the first Monday of August 1959 and of each year thereafter the civil service commission shall certify to the board of supervisors for each classification of employment the average of the two highest wage schedules in effect on July 1st of that year for comparable platform employees and coach or bus operators of other surface street railway and bus systems in the United States operated primarily within municipalities having each a population of not less than 500,000 as determined by the then most recent census taken and published by the director of the census of the United States, and each such system normally employing not less than four hundred (400) platform employees or coach or bus operators, or platform employees, coach and bus operators.

(c) The board of supervisors shall thereupon fix a wage schedule for each classification of platform employees and coach and bus operators of the municipal railway which shall be not in excess of the average of the two highest wage schedules so certified by the civil service commission for each such classification.

(d) When, in addition to their usual duties, such employees are assigned duties as instructors of platform employees or coach or bus operators they shall receive twenty (20¢) cents per hour in addition to the rate of pay to which they are otherwise entitled under the wage schedule as herein provided.

(e) The rates of pay fixed for platform employees and coach and bus operators as herein provided shall be effective from July 1st of the year in which such rates of pay are certified by the civil service commission; and for the fiscal year 1956-1957 the rates of pay specified in the established wage schedules shall be paid to employees in accordance with the classifications of em-

ployment to which assigned as provided in the wage schedules adopted for the fiscal year 1956-1957; provided, that the platform employees and bus and coach operators so employed by the municipal railway on January 11, 1955, shall be paid the maximum rate of pay provided in the wage schedules adopted for the fiscal year of 1956-1957 regardless of classification to which assigned.

(f) Platform employees and coach and bus operators shall have the following holidays off with pay on the day such holidays are legally observed, provided such day falls within the employee's regularly scheduled work week: New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.

The general manager of the municipal railway shall determine whether to pay or not to pay holiday compensation for holidays not worked by any platform employee or coach and bus operator who fails to work his regularly scheduled working day immediately preceding and following the holiday.

Platform employees and coach and bus operators shall receive eight (8) hours of pay at the straight time hourly rate provided in the wage schedule applicable to such employees for such holidays, except employees whose regular work schedule consists of less than eight (8) hours shall be compensated at the straight time hourly rate for actual hours provided in said work schedule.

Platform employees and coach and bus operators required to perform service on the day such holidays are legally observed, whether or not such day falls within the regularly scheduled work week, shall, in addition to holiday pay, be compensated on the basis of the applicable rates provided in the wage schedule.

Platform employees and coach and bus operators shall not receive holiday pay for a holiday falling during the employee's vacation period.

(g) The terms wage schedule and wage schedules wherever used in this section are hereby defined and intended to include only the maximum rate of pay provided in each such wage schedule, but shall not include other financial or nonfinancial benefits or conditions of employment.

Not later than the 25th day of July in each year as to groups and crafts, and not later than the 25th day of August as to plat-

form employees and coach or bus operators, the board of supervisors shall have power and it shall be its duty, subject to the fiscal provisions of the charter but, without reference or amendment to the annual budget, to amend the annual appropriation ordinance and the annual salary ordinance to include the provisions necessary for paying the rates of compensation fixed by the board of supervisors as in this section provided for the then current fiscal year.

On recommendation of the civil service commission the board of supervisors shall establish a rate of pay for trainee platform men and bus or coach operators at a level reflecting the current labor market but below the basic hourly rate for motorman, conductor and bus operator.

This amendment shall become effective on July 1, 1959. [*New section, 1946; amended, 1947; 1955; 1957; 1959*]

Waivers, by employees, of collective bargaining provisions of ordinances enacted pursuant to this section are valid. **O'Sullivan v. City and County of San Francisco** (1956) 145 Cal. App. (2d) 415, 302 Pac. (2d) 688.

Retroactive application of this section to allow vacation payments to employees separated from employment with the city before the effective date of this section is a municipal affair and therefore not in violation Const., art. IV, §§ 31, 32, prohibiting gifts of public funds or grants of extra compensation. **Tevis v. San Francisco** (1954) 43 Cal. (2d) 190, 272 Pac. (2d) 757.

This section is a direct limitation upon the wide discretion generally allowed the board of supervisors in computing wages and salaries. **Gowenlock v. Turner** (1954) 42 Cal. (2d) 296, 267 Pac. (2d) 310.

Both parts of this section, the earlier part and the portion relating specifically to municipal railway employees, are aimed at providing standards of compensation for particular groups of city employees and vary only as to the methods used in determining them. No distinction was intended between the use of the term "rate of pay" in the earlier part and "wages" and "wage schedules" in the second part, where "rate of pay" and "wages" are used interchangeably. **Gowenlock v. Turner** (1954) 42 Cal. (2d) 296, 267 Pac. (2d) 310.

This section cannot be construed as requiring the city officials, instead of attempting to effectuate any specific guarantee of hours for municipal railway employees, to assign a monetary value to such a benefit and average it with the wages stated in the schedules consulted. **Gowenlock v. Turner** (1954) 42 Cal. (2d) 296, 267 Pac. (2d) 310.

A guarantee as to minimum hours of work is a provision outside the scope of a charter section establishing a method of computing a basic "rate of pay" for employees; it does not affect the rate of an employee's pay, that is, the amount of compensation per unit of work, it deals only with the number of hours of work to which an employee may claim to be entitled. **Gowenlock v. Turner** (1954) 42 Cal. (2d) 296, 267 Pac. (2d) 310.

The wages of municipal railway employees cannot be fixed by the

formula in the provision of this section that where there is established "a rate of pay . . . for groups or crafts through collective bargaining agreements with employers employing such groups or crafts, and such rate is recognized and paid throughout the industry and the establishments employing such groups or crafts in San Francisco," the civil service commission must certify to the board of supervisors the prevailing rates, for nearly all of the public transportation service in San Francisco has been performed by the municipal railway and accordingly there is no "prevailing rate of pay" established for street railway employees within the city and county. **Gowenlock v. Turner** (1954) 42 Cal. (2d) 296, 267 Pac. (2d) 310.

Computing wages of municipal railway employees under this section on the basis of wage schedules of other street railways in California does not require consideration of the guaranteed minimum hour provisions of those schedules, for under § 150 payments of wages for such guaranteed minimum hours may not be made to an employee who did not work for that amount of time. It would be necessary, in order to pay each employee for a minimum of eight hours, to revise the entire operating schedule to provide for such hours, and to revise it continually and at great effort and expense, a result not intended by the people in adopting the charter section. **Gowenlock v. Turner** (1954) 42 Cal. (2d) 296, 267 Pac. (2d) 310.

By a provision in this section that city employees are entitled to the same "rate of pay" as established by collective bargaining for groups and crafts in private employment is meant that if the private employee is entitled to a certain amount for a week's work so also is the city employee. **Sheehan v. San Francisco** (1954) 124 Cal. App. (2d) 769, 269 Pac. (2d) 678.

Where the city observes a holiday and thus prevents its employees from working, it cannot deduct the day from the pay of employees who are members of groups and crafts embraced by this section on the ground that such day is not one which is designated in the group or craft's collective bargaining agreement as a day off with pay. **Sheehan v. San Francisco** (1954) 124 Cal. App. (2d) 769, 269 Pac. (2d) 678.

Under § 151 which provides that the board may approve, amend or reject schedules of compensation proposed by the commission, and under this section which provides that a rate of pay fixed by the board shall be determined on the basis of rates of pay certified by the commission, the charter is prescribing the manner in which the board shall exercise certain of its powers as contemplated by § 9. **Butler v. San Francisco** (1951) 104 Cal. App. (2d) 126, 231 Pac. (2d) 75.

The board of supervisors must comply with the procedural requirements and time limits prescribed in this section, and it is not the duty of the board, when amending the annual appropriation and salary ordinances on or before July 25 in any year, to fix the compensation of members of groups or crafts, at the rate established by bargaining agreements if such agreements are executed after the second Monday in July and prior to the adoption of the amendatory ordinances. **Butler v. San Francisco** (1951) 104 Cal. App. (2d) 126, 231 Pac. (2d) 75.

In determining whether rates of pay to city employees are to be fixed in conformance with collective bargaining agreements, as provided in this section, or whether the method under § 151 applies, the work actually being performed by the employee is the governing factor, not the classification under which they are hired. **Randall v. Wolff** (1950) 95 Cal. App. (2d) 795, 214 Pac. (2d) 58.

The hiring and paying of municipal employees is a municipal affair, and a charter provision like this section is for the "government of San

Francisco within Const. Art. XI, § 8." **Adams v. Wolff** (1948) 84 Cal. App. (2d) 435, 190 Pac. (2d) 665.

This section is not an unconstitutional delegation of legislative power. **Adams v. Wolff** (1948) 84 Cal. App. (2d) 435, 190 Pac. (2d) 665.

The argument that this section has a viciousness that may have tremendous repercussions on city government generally, is not tenable in a court which is not concerned with the wisdom of law. **Adams v. Wolff** (1948) 84 Cal. App. (2d) 435, 190 Pac. (2d) 665.

This section relates to "take home pay" of employees, and extends to premium pay for work on night shifts and pay for holidays. **Adams v. Wolff** (1948) 84 Cal. App. (2d) 435, 190 Pac. (2d) 665.

This section is not subject to objection on the ground that it is not one of the matters enumerated in Const. Art. XI, § 8½. **Adams v. Wolff** (1948) 84 Cal. App. (2d) 435, 190 Pac. (2d) 665.

This section does not provide for collective bargaining by employees, or contravene the state policy precluding such bargaining by public corporations. **Adams v. Wolff** (1948) 84 Cal. App. (2d) 435, 190 Pac. (2d) 665.

This section does not violate Const. Art. XI, § 13, which is merely a restraint on the state legislature's interference with municipal affairs. **Adams v. Wolff** (1948) 84 Cal. App. (2d) 435, 190 Pac. (2d) 665.

This section, providing for regulation of rates of pay of municipal employees in certain crafts or groups according to collective bargaining in private employment, does not govern the sick and disability leaves provided for municipal employees by § 153 of the charter, rule 32 of the civil service commission, and part 1, § 301, of the municipal Code, since such leaves are not an element of the compensation of such employees. **Adams v. San Francisco** (1949) 94 Cal. App. (2d) 586, 211 Pac. (2d) 368, 212 Pac. (2d) 272.

Annual vacations for municipal employees in the crafts and groups embraced by the provisions of this section relating to collective bargaining agreements were to be in accordance with those agreements and not as allowed municipal employees under the former provisions of § 151. **Adams v. San Francisco** (1949) 94 Cal. App. (2d) 586, 211 Pac. (2d) 368, 212 Pac. (2d) 272.

Fixed monthly contributions for health and welfare purposes made by private employers under collective bargaining agreements are part of the employees' basic rate of pay, or take home pay, hence within the "rate of pay" provided for in this section for members of groups or crafts employed by the city. **Martin v. San Francisco** (1959) 168 Cal. App. (2d) 570, 336 Pac. (2d) 239.

Where the city did not make health and welfare contributions on behalf of its employees in groups or crafts that private employers made under collective bargaining agreements, and made deductions under § 172.1 for the city's health plan, city employees were not receiving the same take home pay as their counterparts in private industry, as required by this section; and employees were entitled to recover amounts deducted, adjusted to compensate for the difference in cost of like protection in the two systems plus an amount that would reasonably compensate for the broader coverage, if any, under the private system, with credit to the city for contributions made under § 172.1.11. **Martin v. San Francisco** (1959) 168 Cal. App. (2d) 570, 336 Pac. (2d) 239.

Where civil service commission had before it the different contracts between union and management covering maintenance machinists in private industry, together with rates of pay for different groups of employers, and conducted its surveys in a manner reasonably calculated to discover all facts that might bear significantly on the problem to be solved, it did not abuse its discretion under this section. **Miller v. San Francisco** (1959) 174 ACA 106, 344 Pac. (2d) 102.

Where the civil service commission certified a contract rate in March, 1955, as required under this section, and in June discovered a change in conditions placing the employees under § 151, rather than this section, it was too late to proceed under this section for that year because of the provision that the Board of Supervisors must adopt salary schedules not later than April 1. **Miller v. San Francisco** (1959) 174 ACA 106, 344 Pac. (2d) 102.

Annual Vacation of Employees

SECTION 151.4. Every person employed in the city and county service shall be allowed a vacation with pay annually, as long as he continues in his employment, as follows:

1. After one year's continuous service, ten working days.
 2. After five years' continuous service, fifteen working days.
- [*New section, 1949; amended 1960*]

Cited in **Tevis v. San Francisco** (1954) 43 Cal. (2d) 190, 272 Pac. (2d) 757.

SECTION 151.4.1. Employees may elect not to take their entire vacation in any one year and in such event may accumulate the days allowable and not taken for use at some future time, provided, however, that no employee may accumulate unused vacation allowance in excess of thirty working days regardless of length of service. [*New section, 1960*]

SECTION 151.4.2. In computing vacation pay, no employee shall be considered to work more than five days each week. Vacation pay for employees working less than a five-day week shall be computed proportionately. [*New section, 1960*]

SECTION 151.4.3. If a holiday occurs during such employee's vacation, and the employee would as a matter of law have been entitled to said day as a regular day off, such holiday shall not be considered a day of vacation chargeable to the employee's vacation allowance provided for in section 151.4. [*New section, 1960*]

SECTION 151.4.4. The time when vacations are to be taken shall be at the convenience of the department head with due regard for seniority. [*New section, 1960*]

§ 151.4.5-151.4.6-151.5

SECTION 151.4.5. An employee with one year or more of service who ceases to be employed by the city and county and who has neither received nor waived his current annual vacation allowance provided for in section 151.4 shall receive a pro rata payment for all service performed since January 1 of the calendar year in which he ceases to be employed, together with an amount equivalent to any accumulated vacation allowance due him. [*New section, 1960*]

SECTION 151.4.6. The board of supervisors shall enact any and all ordinances necessary to administer, interpret and regulate the provisions of sections 151.4 to and including 151.4.5. [*New section, 1960*]

Vacations for Per Diem Workers

SECTION 151.5. (a) Every employee of the City and County of San Francisco whose rate of compensation is fixed pursuant to the provisions of section 151.3 of this charter shall be entitled to receive an annual vacation at the time, with the pay and of the duration specified in section 151.4, and no section of the charter nor any provision of any collective bargaining agreement nor any street railway or bus wage schedule shall be construed in any manner or for any purpose to increase, reduce or otherwise affect the time or duration of, or pay for, vacations provided by section 151.4, nor shall any employee be deemed to have any vacation rights other than or in excess of the vacation rights specified in section 151.4.

(b) The vacation rights granted by section 151.4 or by this section, or contained in any collective bargaining agreements, or in any street railway or bus wage schedules, as any of said terms are referred to in section 151.3 of this charter, shall in no way increase, reduce or otherwise affect or be deemed to affect the wage or pay rate or schedule determinations made pursuant to the provisions of said section 151.3.

(c) All vacation payments heretofore made to employees of the City and County of San Francisco in the manner and to the extent prescribed by sections 375 to 380, inclusive, of Part I of the San Francisco Municipal Code, are hereby deemed to have been

earned and the payments therefor are hereby ratified and validated, and for all services rendered by employees during the calendar years 1948, 1949 and 1950 vacations shall be granted and paid pursuant to the terms of said sections of the Municipal Code.

(d) This section shall become effective upon approval by the State Legislature. [*New section, 1950*]

The clear purpose of subsection (c) of this section is to validate payments made for vacations to which employees were not entitled under collective bargaining agreements and to authorize the city to pay for vacation time in employment where, because of such agreements, no vacation pay was allowed. **Tevis v. San Francisco** (1954) 43 Cal. (2d) 190, 272 Pac. (2d) 757.

The right of employees to receive accumulated vacation pay under this section accruing on the effective date, September 26, 1950, the legal liability of the City and County for payment should have been treated as an obligation of the fiscal year 1950-1951. **Tevis v. San Francisco** (1954) 43 Cal. (2d) 190, 272 Pac. (2d) 757.

Rights to vacation pay under this section to employees separated from employment prior to the effective date of this section are not barred by the provision in § 150 that no officer or employee shall be paid for a greater time than that covered by his actual service, for the intent to make such payment is clear from this section which, being later in time, would control the earlier provision. **Tevis v. San Francisco** (1954) 43 Cal. (2d) 190, 272 Pac. (2d) 757.

In fixing the method in which vacations are to be computed, the reference in this section to section 375 of part I of the Municipal Code, which allows an annual vacation to an employee "as long as he remains in the City and County service," does not mean that separation from service should in any way affect an employee's right to receive pay for accrued vacation rights; it is unreasonable to conclude that the framers of the charter amendment, by reference to sections of the Municipal Code dealing with vacations, intended to make continued service a condition precedent to receiving payment of vacation pay as a reward for services previously performed. **Tevis v. San Francisco** (1954) 43 Cal. (2d) 190, 272 Pac. (2d) 757.

SECTION 151.6. Notwithstanding the provisions of sections 35.5.1, 36.2, 150, 151, 151.3, or any other provision of this charter, the board of supervisors may provide by ordinance for the payment of the costs of replacing or repairing equipment, property, or prostheses of any uniformed officer or employee of the police department, fire department, sheriff's office or municipal railway, such as, but not confined to, eyeglasses, hearing aids, dentures, watches, or articles of clothing necessarily worn or carried by such employee when any such items are damaged in the line of duty without fault of the employee. If the items are damaged beyond repair, the actual value of such items may be paid. The value of such items shall be determined as of the time of the damage thereto.

The board by a three-fourths vote of all of its members may make similar provision in relation to any other officer or employee where it finds that the damage or loss was occasioned by unusual circumstances or the occurrence of an extraordinary event.

The board is authorized to enact any and all ordinances necessary to carry out the provisions of this section. [*New section, 1962*]

Service Records

SECTION 152. The civil service commission shall establish an inspection service for the purpose of investigating the conduct of and action of appointees in all positions and of securing records of service for promotion and other purposes. All departments shall cooperate with the commission in making its investigations and any person hindering the commission or its agents shall be subject to suspension.

Cited in *Adams v. San Francisco* (1949) 94 Cal. App. (2d) 586, 211 Pac. (2d) 368; 212 Pac. (2d) 272

Leaves of Absence

SECTION 153. Leaves of absence to officers and employees of the city and county shall be governed by rules established by the civil service commission, provided that leave of absence to any officer or employee for the purpose of leaving the city and county, taking a position outside of the city and county service, or accepting a position in some department or office of the city and county other than the one in which he is employed and where the duties are in no way related to the duties covered by his civil service classification, shall be limited to six (6) months; and provided, further, that no limit shall be placed on a leave of absence granted to enable an officer or employee to accept promotion to a non-civil service position in the same department in which he holds civil service status, or promotion to co-related work in another department or office of the city and county.

Leaves of absence shall be granted to officers and employees of the City and County of San Francisco and non-certificated officers and employees of the San Francisco Unified School District for

service in the armed forces of the United States or the State of California or for service on ships operated by or for the United States government in time of war and for such time thereafter as may be provided by rule of the civil service commission, but not to exceed two (2) years after the proclamation of peace, except in case of disability incurred while in active service with the armed forces or the merchant marine when such disability shall extend beyond such period.

Whenever any officer or employee of the City and County of San Francisco, or any non-certificated officer or employee of the San Francisco Unified School District shall, by order of the government of the United States or by lawful order of any of its departments or officers, or by lawful order of the State of California, or any of its departments or officers, be directed in time of peace to report and serve in the armed forces of the United States, or in the armed forces of the State of California, said officer or employee shall be entitled to a leave of absence from his office or position during the time of such service and for a period not to exceed three (3) months after the expiration thereof. Officers and employees entering or being inducted into any of the services requiring military leave as provided in this section shall file with

the civil service commission a copy of the orders necessitating such service prior to the effective date of the leave of absence. Leaves granted pursuant to the provisions of this and the preceding paragraph of this section shall be designated "military leaves."

The board of supervisors may, on the recommendation of the civil service commission, provide by ordinance that leaves of absence shall be granted to officers and employees during time of war or during any emergency declared by the President of the United States, for other service directly connected with the prosecution of the war or national defense or preparedness. Leaves granted under authority of ordinances enacted pursuant to the provisions of this paragraph shall be designated "war effort leaves."

In time of emergency declared by the President of the United States or by the Congress, or while any act authorizing compulsory military service or training is in effect, the board of supervisors, upon the recommendation of the civil service commission, may provide by ordinance that subject to rules of the civil service commission, leaves of absence shall be granted to officers and employees of the City and County of San Francisco and non-certificated officers and employees of the San Francisco Unified School District, for sea duty as licensed officers aboard ships operated by or for the United States government.

Any officer or employee on military leave, who, prior to such leave, has been appointed to a permanent position in the city and county service, shall be entitled to resume such position at the expiration of his leave, and in determining and fixing rights, seniority, salary and otherwise, which have accrued and shall inure to the benefit of such officer or employee, the term of military leave shall be considered and accounted a part of his service under the city and county.

Persons serving in the armed forces of the United States or the State of California during time of war or during any emergency lawfully declared by the President of the United States, who have standing on an eligible list, shall retain their places thereon, and upon presenting an honorable discharge or certificate of honorable active service from such military service within the period of

time and subject to the conditions as prescribed by rules of the civil service commission, shall be preferred for appointment for a period of four (4) years after the proclamation of peace or the termination of said emergency in the order of standing upon such register at the time of entering such military service and before candidates procuring standing through an examination held subsequent to the entrance of such eligibles into the military service. If while in said military service the names of such persons are reached for certification to permanent positions, appointments shall be made to serve until such persons in the military service shall present to the civil service commission an honorable discharge or certificate of honorable active service within the period of time and subject to the conditions as prescribed by rules of the civil service commission, but not more than one (1) year after the date of discharge of each such eligible, when they shall be certified and assume the duties of positions in said class and their certification to said positions for all purposes of seniority shall be deemed to be the date when their names on such eligible lists were reached for certification, provided that each appointee to a position shall serve such probationary period as is required in section 148 of this charter, and provided that such employee while serving on such probation shall be permitted to participate in any promotive examination to which his classification is eligible but shall not be entitled to certification by virtue of such promotional examination prior to satisfactory completion of said probationary period and provided further that no such persons shall be certified to entrance positions in the uniformed ranks of the police and fire departments under this provision who are more than thirty-five (35) years of age unless the names of such persons were reached for certification to such positions before such persons reached said age.

Persons who participate in a regular written civil service examination and who by reason of their active services in the Army, Navy or Marine Corps are unable to complete all parts of the examination and who present their orders or other competent proof of service in the same manner as is required of eligibles, shall acquire standing on eligible lists in accordance with the relative excellence attained by participation in the part or parts of the examinations already completed; provided that upon pre-

senting their honorable discharges or certificates of honorable active service within the time limits specified in this section covering eligibles, they must qualify in the remainder of the examinations. When qualified they shall be certified as of the date they would have been reached for certification in accordance with the relative excellence attained by their participation in the entire examination.

The civil service commission shall adopt rules to govern the administration of leaves as herein provided and to govern lay-offs occasioned by the return of officers, employees, or eligibles who have been appointed and granted leave or certified as provided in this section.

All leaves of absence granted under Rule 31.2 of the civil service commission are hereby ratified and approved.

For the purpose of certifications, appointments, leaves or any other matters concerning the rights of persons who are serving or have served in the armed forces of the United States or the State of California, the provisions of this section shall be retroactive to September 16, 1940, and any persons heretofore granted military leaves for any purpose other than to enter the armed forces of the United States or the State of California shall be deemed to have been granted war effort leaves by the civil service commission in accordance with the provisions of this section.

The civil service commission by rule and subject to the approval of the board of supervisors by ordinance, shall provide for leaves of absence, due to illness or disability, which leave or leaves may be cumulative, if not used as authorized, provided that the accumulated unused period of sick leave shall not exceed six (6) months, regardless of length of service, and provided further that violation or abuse of the provisions of said rule and ordinance by any officer or employee shall be deemed an act of insubordination and inattention to duties. [*Amended, 1941; 1943; 1944; 1947; 1951*]

The declaration of cessation of hostilities of World War II, issued by the President of the United States on December 31, 1946, was not, and there has not been, a proclamation of peace or termination of the national emergency within the meaning of this section. **Lynch v. San Francisco** (Apr. 17, 1953) 117 Cal. App. (2d) 347, 255 Pac. (2d) 827.

The sick and disability leaves for municipal employees which are provided by this section, rule 32 of the civil service commission, and part I, § 301 of the Municipal Code, are not governed by § 151.3, providing for regulation of pay rates of municipal employees in accord-

ance with collective bargaining agreements in private industry, since such leaves are not an element of compensation of such employees. **Adams v. San Francisco** (1949) 94 Cal. App. (2d) 586, 211 Pac. (2d) 368, 212 Pac. (2d) 272.

A judgment for petitioner in mandamus compelling the civil service commission to certify his name to the board of supervisors to the position of general clerk stenographer in such board properly provided that petitioner be granted a leave of absence, without pay, from his present position as general clerk typist in the recorder's office while serving the probationary period in the new office. **Ballf v. Civil Service Commission** (1941) 43 Cal. App. (2d) 211, 110 Pac. (2d) 478.

Cited in **Hanley v. Murphy** (1953) 40 Cal. (2d) 572, 255 Pac. (2d) 1.

Reinstatement of and Leaves of Absence for Members of American Red Cross

SECTION 153.1. (a) Whenever any officer or employee of the City and County of San Francisco, or any non-certified employee of the Unified School District thereof, after the 8th day of December, 1941, and during the existence of the present war between the United States of America and the Axis Powers, has resigned from or relinquished his or her position under the government of the city and county, or under said Unified School District thereof, and within a period of sixty days thereafter has entered the service of the American Red Cross, as a social service worker, field director or assistant field director therein, said officer or employee after the termination of his or her service with said American Red Cross, and within the time limits prescribed by law for persons on military leave, shall be entitled to resume his or her position from which he or she resigned or which he or she relinquished, upon presentation of proof that said person did within sixty days after resigning from, or relinquishing, his or her position with the city and county, or with the Unified School District thereof, enter the service of the American Red Cross as a social service worker, field director or assistant field director. Service with the American Red Cross as a social service worker, field director or assistant field director, during the existing war shall be deemed to be service with the city and county insofar as seniority of service and compensation are concerned, and said person so serving with the said American Red Cross shall be deemed to be on military leave, and shall be entitled to all the rights and privileges accorded to other officers and employees of said city and county who have been granted military leave to serve in the armed forces of the United States, or of the State of California.

The rights and privileges herein granted to former officers and employees serving as social service workers, field directors or assistant field directors with the American Red Cross shall cease at the expiration of two years after the end of the present war between the United States of America and the Axis Powers, provided, however, that any person who severs his or her connection with the American Red Cross, and who fails to seek reinstatement to his or her position with the city and county, or with the Unified School District, within the time limits prescribed for persons on military leaves as defined in section 153 of the charter and rules of the civil service commission, shall not be entitled to reinstatement.

(b) From and after the effective date of this amendment military leave as provided in section 153 of this charter for those serving in the armed forces of the United States or of the State of California shall be granted for service with the American Red Cross as social service worker, field director or assistant field director. [*New section, 1945*]

Suspension and Dismissal for Cause

SECTION 154. No person employed under the civil service provisions of this charter, exclusive of members of the police and fire departments as provided under section 155, hereof, in a position defined by the commission as "permanent" shall be removed or discharged except for cause, upon written charges, and after an opportunity to be heard in his own defense. Pending such hearing, the appointing officer may suspend the person so accused; but such suspension shall not be valid for more than thirty days, unless hearing upon the charges shall be delayed beyond such time by the act of the accused person. When charges are made, the appointing officer shall, in writing, notify the person accused of the time and place when the charges will be heard, by mailing such statement to his last known address. The appointing officer shall publicly hear and determine the charges, and may exonerate, suspend or dismiss the accused. If the employee is exonerated the appointing officer may, at his discretion, remit the suspension and may order payment of salary to the employee for the time under suspension, and the report of such suspension shall thereupon be expunged from the record of service of such employee. The civil

service commission shall immediately be notified of the charges when made, of the hearing, and of the finding thereon. The finding of the appointing officer shall be final, unless within thirty days therefrom the dismissed employee appeals to the civil service commission. The appeal and all proceedings shall be in writing and shall briefly state the grounds therefor. The civil service commission shall examine into the case and may require the appointing officer to furnish a record of the hearing and may require in writing any additional evidence it deems material, and may, thereupon, make such decision as it deems just. The order or decision of the commission upon such appeal shall be final and shall forthwith be enforced by the appointing officer. If the civil service commission shall reverse or alter the finding of the appointing officer it may, in its discretion, order that the employee affected be paid salary from the time of his discharge or suspension.

The civil service commission may hear and determine any charge filed by a citizen or by the authorized agents of the commission when the appointing officer neglects or refuses to act. Removal or discharge may be made for any of the following causes: incompetence, habitual intemperance, immoral conduct, insubordination, discourteous treatment of the public, dishonesty, inattention to duties, or engaging in prohibited political activities.

Nothing in this section shall limit or restrict rules adopted by the commission governing lay-offs or reduction in force.

The appointing officer may, for disciplinary purposes, suspend a subordinate for a period not exceeding thirty days; and suspension shall carry with it the loss of salary for the period of suspension. The suspended employee shall be notified in writing of the reason for such suspension, and if the suspension be for more than five days the employee shall, at his request, be given a hearing by the appointing officer. The decision of the appointing officer in all cases of suspension for disciplinary purposes shall be final. [*Amended, 1948*]

Under this section the civil service commission acts de novo on appeal and its order supersedes the order appealed from. *Denton v. San Francisco* (1953) 119 Cal. App. (2d) 369, 260 Pac. (2d) 83.

The power of the civil service commission upon the appeal provided for by this section is as broad as that of the appointing officer who hears and determines charges, and the commission, too, may "exonerate suspend, or dismiss the accused." *Denton v. San Francisco* (1953) 119 Cal. App. (2d) 369, 260 Pac. (2d) 83.

The limit of 30 days upon the suspension that the appointing officer under this section may impose in the disciplinary proceeding, in which there is no right to hearing unless demanded and no right to appeal, does not apply to the suspension that may result from the more formal proceeding providing for written charges, hearing, and an unqualified right of appeal to the civil service commission. **Denton v. San Francisco** (1953) 119 Cal. App. (2d) 369, 260 Pac. (2d) 83.

The fact that the written charge under this section improperly charges an appointee with "incompetence" as well as insubordination is immaterial where the written charge and the accompanying police report fully set forth the facts and circumstances on which the accusations is based. **Scannell v. Wolff** (1948) 86 Cal. App. (2d) 489, 195 Pac. (2d) 536.

The provision of this section forbidding removal except "upon written charges" is satisfied by a letter from the appointing officer and an accompanying police report setting forth the facts and circumstances on which the accusation is based. **Scannell v. Wolff** (1948) 86 Cal. App. (2d) 489, 195 Pac. (2d) 536.

The provision of this section that the commission on appeal "may require in writing additional evidence" does not authorize the admission of evidence which cannot be admitted on the trial itself, such as unsworn letters. **Scannell v. Wolff** (1948) 86 Cal. App. (2d) 489, 195 Pac. (2d) 536.

The appointing officer is not disqualified from sitting in judgment of proceedings under this section by the fact of prejudice or bias, since an otherwise disqualified administrative officer may act if his failure would result in a miscarriage of justice. **Scannell v. Wolff** (1948) 86 Cal. App. (2d) 489, 195 Pac. (2d) 536.

The action of the civil service commission in ordering "that this appeal be denied" is not beyond jurisdiction where the commission did in fact entertain the appeal and its order means that the application for reversal of the decision dismissing the employee is denied. **Scannell v. Wolff** (1948) 86 Cal. App. (2d) 489, 195 Pac. (2d) 536.

The civil service commission has no power to rescind its order dismissing an employee from his position in the municipal civil service in the absence of express authorization. **Hoertkorn v. Sullivan** (1944) 67 Cal. App. (2d) 151, 153 Pac. (2d) 367.

A temporary cessation or suspension from employment is not within the provision of this section prohibiting removal or discharge except for cause, upon written charges and after an opportunity to be heard. **Weigle v. San Francisco** (1937) 23 Cal. App. (2d) 274, 72 Pac. (2d) 902.

The provision of this section for removal of an employee for cause, one of which is incompetence, is not subordinate to Section 2920 of the Labor Code, which specifies events terminating employment. **Reinfeld v. San Francisco City and County Employees Retirement System** (1958) 158 Cal. App. (2d) 460, 322 Pac. (2d) 508.

This section, in its provision for removal of an employee for incompetence after a hearing includes within its terms an employee who is mentally incapacitated. **Reinfeld v. San Francisco City and County Employees Retirement System** (1958) 158 Cal. App. (2d) 460, 322 Pac. (2d) 508.

Former charter, with corresponding or similar provision, cited: § 12. Art. XIII, no removal except for cause. **Rodrigue c. Rogers** (1906) 4 Cal. App. 257, 87 Pac. 563.

Fire and Police Disciplinary Procedure

SECTION 155. Members of the fire or the police department guilty of any offense or violation of the rules and regulations of their respective departments, shall be liable to be punished by reprimand, or by fine not exceeding one month's salary for any offense, or by suspension for not to exceed three months, or by dismissal, after trial and hearing by the commissioners of their respective departments; provided, however, that the chief of each respective department for disciplinary purposes may suspend a member for a period not to exceed ten days for violation of the rules and regulations of his department. Any member so suspended shall have the right to appeal such suspension to the fire commission or to the police commission, as the case may be, and have a trial and hearing on such suspension. Written notice of appeal must be filed within 10 days after such suspension and the hearing of said appeal must be held within 30 days after the filing of said notice of appeal. If the commission shall reverse or alter the finding of the chief, it shall in the case of a reversal and in other cases it may in its discretion, order that the member affected be paid salary for the time of his suspension. In the event the chief should exercise such power of suspension, the member involved shall not be subject to any further disciplinary action for the same offense.

Subject to the foregoing members of either department shall not be subject to dismissal, nor to punishment for any breach of duty or misconduct, except for cause, nor until after a fair and impartial trial before the commissioners of their respective departments, upon a verified complaint filed with such commission setting forth specifically the acts complained of, and after such reasonable notice to them as to time and place of hearings as such commission may, by rule, prescribe. The accused shall be entitled, upon hearing, to appear personally and by counsel; to have a public trial; and to secure and enforce, free of expense, the attendance of all witnesses necessary for his defense. [*Amended, 1963*]

The charge against a police officer, under this section, in the form of an ordinary complaint and verified in the form prescribed for verification of pleadings in civil actions is sufficient in form. **Shewbridge v. Police Commission** (1944) 64 Cal. App. (2d) 787, 149 Pac. (2d) 429.

The general law requiring that rules and regulations for government of the police department shall prescribe a separate and distinct penalty

for violation of each rule and regulation (See Stats. 1911, p. 1160; Deering's Gen. Laws, Act 6014) has no application in San Francisco. **Shewbridge v. Police Commission** (1944) 64 Cal. App. (2d) 787, 149 Pac. (2d) 429.

The police commission has no power under this section to rehear a proceeding resulting in an order removing a police officer, in the absence of express authority. The power to punish after hearing does not carry the express power to revoke or to reinstate. **Hoertkorn v. Sullivan** (1944) 67 Cal. App. (2d) 151, 153 Pac. (2d) 367.

The complaint against a police officer may be verified before the chief of police in view of § 4, and Pol. Code §§ 343 (now Gov. Code, § 1001), 1028. **Christal v. Police Commission** (1939) 33 Cal. App. (2d) 564, 92 Pac. (2d) 416.

The exercise by a police officer of his constitutional privilege against testifying in a grand jury investigation into the question of his commission of crime, is cause for dismissal under this section, even in the absence of any specific rule requiring an officer to testify before the grand jury or relating to conduct unbecoming an officer. **Christal v. Police Commission** (1939) 33 Cal. App. (2d) 564, 92 Pac. (2d) 416.

The authority conferred upon the commissioners by this section is pursuant to the Constitution and is of a judicial character exercised by a quasi-judicial body. **Ludolph v. Board of Police Commissioners** (1938) 30 Cal. App. (2d) 211, 86 Pac. (2d) 118.

The penalty imposed upon a member of the department found guilty of the charges brought against him under this section involves discretion of the administrative body, not its jurisdiction. **Ludolph v. Board of Police Commissioners** (1938) 30 Cal. App. (2d) 211, 86 Pac. (2d) 118.

The taking of evidence at a hearing for the purpose of determining the extent of punishment to be administered in accordance with this section, after previous trial and conviction, does not amount to being tried anew. **Ludolph v. Board of Police Commissions** (1938) 30 Cal. App. (2d) 211, 86 Pac. (2d) 118.

Where an order dismissing an officer is made by the board in the proper exercise of its discretionary powers and after formal charge, trial and conviction under this section, such order will not be set aside by the courts. **Ludolph v. Board of Police Commissioners** (1938) 30 Cal. App. (2d) 211, 86 Pac. (2d) 118.

The duty of the commissioners on a trial of charges against a member of the police department, or on a hearing after his conviction, to fix his punishment cannot be diminished nor extended by his prior acquittal of charges brought by the grand jury. **Ludolph v. Board of Police Commissioners** (1938) 30 Cal. App. (2d) 211, 86 Pac. (2d) 118.

Former charter, with corresponding or similar provisions, cited: ch. 7, Art. VII, punishment of guilty members. **Cleu v. Board of Police Commissioners** (1906) 3 Cal. App. 174, 84 Pac. 672.

Transfer of Disabled

SECTION 156. When a permanent civil service employee other than a member of the fire department and police department who has served not less than three (3) years in his position, has become incapable through advanced age, accident or other disability, of

performing the duties of his position, the civil service commission may, with the consent of the appointing officer or appointing officers involved, transfer him to a position within his capacities to perform, whether or not within the classification for which he qualified for appointment, but such position shall not be in a classification having a higher compensation schedule than the one from which he is transferred, and his compensation shall not thereafter be increased beyond the maximum salary for the classification to which such employee is transferred, nor in any event shall his salary be increased to equal the salary such employee would have received had he remained in his former position; provided, however, that a permanent employee, including any permanent member of the fire department and police department, who has become incapable of resuming his former position through disability incurred while on active service with the armed forces while on military leave may upon application after his discharge from military service be transferred under the provisions of this section, regardless of his length of service.

Employees transferred under the provisions of this section may, upon recovery from the disability, and with the consent of the civil service commission, return to a vacancy in their former classification.

Positions filled under the provisions of this section shall not be subject to salary standardization, but the salaries thereafter shall be fixed by the civil service commission within the limitations herein set forth, provided, however, that salaries of such employees who were transferred from or to positions the compensations for which are subject to section 151.3 hereof may be revised as of July 1st within the limitations herein set forth to reflect rates of pay adopted under the provisions of section 151.3 for the then ensuing fiscal year by appropriate amendment to the annual appropriation ordinance and annual salary ordinance but without reference or amendment to the annual budget. The civil service commission shall make rules to carry out the intent of this section and such rules shall govern all transfers made under the provisions of this section. [*Amended, 1944; 1946; 1953*]

Transfer of Permanent Civil Service Employees Because of Technological Advances, Automation, or Installation of New Equipment

SECTION 156.1. When, because of technological advances, automation, or the installation of new equipment a surplus of em-

ployees is created and a permanent civil service employee who has completed his probationary period is to be laid off, the civil service commission may transfer such employee to a position within his capacities to perform, whether or not within the classification for which he qualified for appointment. The civil service commission may administer any examinations which the commission deems advisable to test the capacity of such employee, and shall be the judge of the ability of the employee to perform the duties in the position to which transfer is to be made. An employee transferred under the provisions of this section shall serve a new probationary period. The position to which transfer is to be made shall not be in a classification having a higher compensation schedule than the one from which he is transferred, and compensation in the position to which transferred shall be governed by the provisions of the salary standardization ordinance and the salary ordinance. Employees transferred under the provisions of this section may, with the approval of the civil service commission and the appointing officer involved, be returned to a vacancy in his former classification. The civil service commission shall adopt rules to carry out the intent of this section, and such rules shall govern all transfers made under the provisions of this section. [*New section, 1963*]

Prohibition of Political Activity

SECTION 157. Active participation in city and county politics, relative to the election or appointment of public officials, by civil service employees and eligibles of the city and county, is subversive of the best interests of the merit system and, therefore, persons holding positions in the classified civil service or on eligible lists for such positions shall take no active part in such political campaigns, or in soliciting votes, or in levying, contributing or soliciting funds or support, in each case for the purpose of favoring or hindering the appointment or election of candidates for city and county offices. Violation of the provisions of this section shall be deemed an act of insubordination and considered good cause for suspension or dismissal from position or removal from eligible list.

Cited in **Butler v. San Francisco** (1951) 104 Cal. App. (2d) 126, 231 Pac. (2d) 75.

PENSIONS AND RETIREMENT

Retirement System for Officers and Employees

SECTION 158. In order to continue in force, with modifications as are set forth in this charter, provisions already existing for retirement and death benefits for officers and employees of the city and county, the San Francisco City and County Employees' Retirement System, hereinafter referred to as the retirement system or the system, is hereby created. Elective officers and members of boards and commissions shall not be eligible to the benefits of said retirement system. Officers who are made appointive by this charter, as well as officers and employees of offices heretofore not under the retirement system and who are brought under the said system by this charter, who shall have attained the age of at least seventy years on the date said charter becomes effective, shall not become members of the retirement system. Such officers and employees who shall not have attained the age of seventy years on such date shall become members of said retirement system on the date this charter becomes effective and any benefits granted on account of service excluding service rendered as lawful members of the retirement system, rendered by said officers and employees to the city and county prior to such date shall be provided by contributions of the city and county.

Ordinance No. 5561 (New Series) and amendments thereto, now establishing the employees' retirement system, shall continue in force until amended or revoked by the board of supervisors as provided in this section. The board of supervisors is hereby empowered to enact, by a vote of three-fourths of its members, any and all ordinances necessary to carry into effect the provisions of sections 158 to 172, both inclusive, of this charter; provided that the board of supervisors shall secure, through the retirement board, an actuarial report of the cost and effect of any proposed change in the benefits under the retirement system, before enacting an ordinance or before voting to submit any proposed charter amendment providing for such change.

Retirement of Elective Officers

SECTION 158.1. Notwithstanding the provisions of section 158 of this charter, elective officers, except members of the board of supervisors and of boards and commissions, shall be members of the San Francisco City and County Employee's Retirement Sys-

§ 158.1-158.2

tem and shall be subject to all of the conditions applying to other members thereof, except members of the fire and police departments, and except as herein otherwise provided. In the determination of contributions and benefits of any officer becoming a member of the retirement system by virtue of the provisions hereof, that part of the salary of such officer which exceeds one thousand dollars (\$1,000) per month shall be excluded. Elective officers in office on the effective date hereof and otherwise eligible to the provisions hereof shall have the option to become members of said retirement system to be exercised in writing on a form furnished by the retirement system and to be filed at the office of said system not later than ninety days after the effective date hereof. Each such present and future elective officer may retire at his option but only after having attained the age of seventy years and only after having occupied such an elective office or having been otherwise employed in a position subject to membership in the retirement system for at least twenty years immediately preceding retirement, and may retire by filing written application therefor with the retirement board, and the mayor shall thereupon appoint a qualified person for the unexpired term of office remaining at the time of any such retirement. Such elective officer shall thereafter receive a retirement allowance equal to one-half of the compensation received by him at the time of retirement, provided that such allowance shall not exceed five hundred dollars (\$500) per month. Contributions required to provide the portion of the benefits under this section not provided by the member's contribution shall be paid to the retirement system by the city and county. [*New section, 1947*]

Retirement of Elective Officers (Continued)

SECTION 158.2. Notwithstanding the provisions of section 158.1 of this charter, elective officers, except members of boards and commissions, shall be members of the San Francisco City and County Employees' Retirement System under section 165.2 instead of section 158.1; and, notwithstanding the provisions of subdivision (B) of section 165.2, elective officers who are members of the retirement system under section 165.2 shall be retired on the day following the end of the term of office in which the age of seventy years is attained. Contributions, with credited interest, standing to the credit of such individual officers shall be adjusted, as of the effective date hereof, to the amount which they would

have been if the contributions had been made in accordance with section 165 prior to July 1, 1947 and section 165.2 after June 30, 1947. Time during which said members have rendered service as elective officers shall be included under subsection (G) of section 165.2, in addition to other time now so included. Contributions required to provide benefits based on service rendered as an elective officer prior to the effective date of membership in the retirement system, shall be paid to the retirement system in the manner provided in section 165.2 for contributions for service rendered prior to the date upon which the member's rate of contribution is based. Elective officers in office on the effective date of this section who are members of the retirement system under section 158.1 at such time, shall have the option to continue as members of the retirement system under section 158.1 instead of this section, to be exercised in writing on a form furnished by the retirement system and to be filed at the office of said system not later than ninety days after the effective date hereof. [*New section, 1953*]

Retirement—Court Employees and Attaches

SECTION 158.3. Employees and attaches of the superior or municipal court, including persons performing duties now performed under the titles of commissioners, phonographic reporters who are paid compensation on a monthly or per diem basis by the city and county, secretaries, stenographers, investigators, messengers and other employees of the superior and municipal courts, in and for the City and County of San Francisco, shall be members of the San Francisco City and County Employees' Retirement System under section 165.2, and shall be subject to all of the conditions applying to other members under that section, except as herein otherwise provided.

Service rendered to the said superior or municipal court in and for the city and county, other than as a phonographic reporter, by persons prior to becoming members under this section on the effective date of this section, hereby declared to be the first day of the month next following its ratification by the Legislature, shall be credited under the retirement system to such persons, provided that it would have qualified for credit when rendered, if said persons had been subject then, as they will be under this section, to the provisions of section 165.2 of this charter and of the ordinances and provisions of the Municipal Code of the City and

§ 158.3

County of San Francisco relating to retirement of members under said section.

Service rendered to said superior court on and after September 15, 1945, or to said municipal court on and after September 1, 1947, by phonographic reporters prior to becoming members under this section on the effective date of this amendment shall be credited under this retirement system to such persons.

Said service, rendered prior to becoming a member under this section on the effective date of this section, shall only be credited to each of such persons if he elect, by written notice, on a form provided by the retirement system, filed in the office of the retirement board of said system prior to July 1, 1953, to receive credit for all or any part of said service, and to pay into the retirement fund, at times and in the manner hereinafter provided, the following amounts: (1) an amount equal to the normal contributions he would have contributed, had he been a member of the retirement system under section 165.2, during the time for which he has elected to receive credit for service, on the basis of compensation paid to him by the city and county on account of said service, and (2) an amount equal to the interest which would have been credited to his account on account of such contributions from the date upon which they would have been made, to the date of payment of such contributions to the retirement system. However, a member shall not receive credit for any portion of such service rendered prior to April 1, 1922, unless he has elected to receive credit for, and has paid into the retirement fund such amounts with respect to, all of said service rendered after March 31, 1922. Such amounts shall be paid into the retirement fund by lump sum payment, or payroll deductions or other installments, over a period not exceeding thirty-six months from July 1, 1953, provided that any balance remaining unpaid at his retirement shall become due and payable forthwith. Benefits, not provided by such amounts, granted to said persons on account of said service rendered prior to the effective date of membership under this section, shall be provided by contributions of the city and county. Such service shall include time during which such person was absent from a status included in the paragraph above by reason of service in the armed forces of the United States in any war in which the United States has engaged.

Notwithstanding the foregoing provisions, any such employee or attache not already a member of the system and who is such an employee or attache on the effective date of this amendment, shall not become a member of the retirement system, unless he elect prior to July 1, 1953, on a form provided by the retirement system, to be a member of said system, and if he does not so elect, he shall not be a member of the retirement system, and shall not be prevented from continuing in such employment by reason of such provision. [*New section, 1953*]

Retirement — Parking Authority Employees

SECTION 158.4. Officers and employees of the Parking Authority of the city and county shall become members of the San Francisco City and County Employees' Retirement System under Section 165.2 on the effective date of this section, hereby declared to be the first day of the month next following its ratification by the Legislature, and thereupon shall be subject to all of the conditions applying to other members under that section inclusive of the provisions of Section 165.6 of the charter, except as herein otherwise provided; provided, however, that Members of such Authority are excluded from the San Francisco City and County Employees' Retirement System.

Service rendered to the said Parking Authority by persons prior to becoming members under this section on the effective date of this section, shall be credited under the Retirement System to such persons, subject to the terms and conditions provided herein. Said service shall only be credited to each of such persons if he elect, by written notice, on a form provided by the retirement system and filed in the office of the retirement board of said system prior to July 1, 1963, to receive credit for said service, and to pay into the retirement fund, at times and in the manner fixed by the Retirement Board, the following amounts: (1) an amount equal to the normal contributions he would have contributed, had he been a member of the retirement system under section 165.2, during the period in which said service was rendered, on the basis of compensation paid to him by the city and county on account of said service, and (2) an amount equal to the interest which would have been credited to his account on account of such contributions from the date upon which they

would have been made, to the date of payment of such contributions to the retirement system; provided that any balance remaining unpaid at his retirement shall become due and payable forthwith. If any such person shall not so elect to receive credit for said service and to pay such amounts of contributions and interest, or having so elected, subsequently does not pay into the retirement fund such amounts at times and in the manner herein provided, and prior to the effective date of his retirement, he shall enter as a new member without credit for any of said service, any moneys theretofore received from him as payment on such amounts together with accumulated interest thereon shall be refunded to him, and the rate of his contribution shall be the normal rate provided in subsection (H) of Section 165.2 at his age on the effective date of this section, otherwise his rate of contribution shall be the rate provided in said subsection (H) of Section 165.2 based on his age at the earliest date in the period for which said service is credited. Benefits, not provided by such amounts, granted to said persons on account of said service rendered prior to the effective date of membership under this section, shall be provided by contributions of the city and county.

Notwithstanding the foregoing provisions, any such officer or employee not already a member of the system and who is such an officer or employee on the effective date of this amendment, shall not become a member of the retirement system, unless he elects to be a member of said system, in writing, on a form provided by the retirement system and filed in the office of the retirement system prior to July 1, 1963; if he does not so elect he shall not be a member of the retirement system, and shall not be prevented from continuing in such employment by reason of the provisions of this section. [*New section, 1963*]

Retirement Board

SECTION 159. The retirement system shall be managed by a retirement board, which is hereby created, and which shall be the successor and have the powers and duties of the board of administration, the board of trustees of the police relief and pension fund and the board of fire pension fund commissioners. The retirement board shall consist of the president of the board of supervisors, the city attorney, a resident official of a life insurance company, and an officer of a bank to be appointed by the

mayor, and three members elected from the active members, who shall not include retired persons of the retirement system, provided that the city attorney may designate, by written document filed with the said retirement board, an assistant city attorney to attend meetings of the said board and to act for him and in his place. The term of office of the five members, other than the ex-officio members, shall be five years, one term expiring each year and the terms of such five members now holding office being unchanged by this section. The members of the retirement board shall serve without compensation. The board shall appoint an actuary, who shall hold office at its pleasure, and may appoint a secretary, provided that the positions of secretary and actuary may be consolidated into one position by the said board, and the board may employ a consulting actuary from time to time. The secretary or actuary shall have the power to administer oaths and affirmations in all matters pertaining to the business of the retirement system.

The retirement board shall be the sole authority and judge, under such general ordinances as may be adopted by the supervisors, as to the conditions under which members may receive and may continue to receive benefits of any sort under the retirement system, and shall have exclusive control of the administration and investment of such fund or funds as may be established, provided that all investments shall be of the character legal for insurance companies in California.

Cited in **Ware v. Retirement Board** (1949) 65 Cal. App. (2d) 781, 151 Pac. (2d) 549.

Actuarial Tables, Rates and Valuations

SECTION 160. The mortality, service and other tables and the rates of contributions for members as recommended by the actuary and the valuations determined by him and approved by the retirement board shall be conclusive and final, and the retirement system shall be based thereon. The total amount, as determined by the actuary and approved by the board, of the contributions required during any fiscal year of the city and county under the retirement system shall be paid into the retirement system by the city and county during such year. Liabilities accruing under the retirement system because of service rendered to the city and county by persons prior to the date their respective classes become

§ 160

eligible for membership in the system, and administrative costs under the system, shall be met by contributions to the retirement system by the city and county, in addition to any amounts contributed to meet liabilities accruing because of service rendered by such persons after becoming members of the system, provided that such prior service liabilities may be met by annual appropriations instead of by one appropriation for the total amount of the liabilities; and provided further, that such appropriation for any one year shall not be less than the amount disbursed during that year on account of prior service.

Contributions to the retirement system required of the city and county shall be charged by the controller against the general fund or the school, utility, bond or other special fund under which the service was rendered, on account of which the contribution is required; provided that contributions required on account of service rendered by any person prior to becoming a member of the system, under a temporary fund, such as bond or county roads funds, or a fund then no longer existing, may be charged against the general fund, and provided further, that any contributions required on account of persons receiving benefits under subdivision (c) of section 165, shall be charged against the general fund.

Continuous Service

SECTION 161. Continuous service shall be defined by the board of supervisors, but the absence prior to September 14, 1940, of any officer or employee of the city and county from service caused by reason of the service of such officer or employee in the military or naval forces of the United States in any war in which the United States has engaged, shall not be deemed to be absence from service for the purposes of the retirement system and such officer or employee shall receive credit under the retirement system, for the period of such absence, in the same manner as if he had not been absent.

On and after September 14, 1940, a member is absent on military service when he is absent from city service by reason of (1) service with the armed forces of the United States or the State of California; (2) service on ships operated by or for the United States government when such service is granted as "military leave" pursuant to section 153 of the charter; (3) service connected with the war effort for which leaves of absence shall be authorized pursuant to section 153 of the charter; or (4) any other service, under an order of the government of the United States or the State of California, or by lawful order of any of the departments or offices of said governments, provided that such absence in any of such services occurs (1) either during a war involving the United States as a belligerent or in time of national emergency, declared by the President of the United States or by the Congress, and for such time thereafter as may be provided by rule of the civil service commission, but not to exceed two years after the proclamation of peace, except in case of disability incurred in line of duty with said armed forces or said ships when such disability extends beyond such period; or (2) in time of peace if he is drafted for such services by the United States government or volunteers for such service while subject to such draft.

For the purposes of this section a war involving the United States as a belligerent exists: (a) whenever Congress has declared any war which has not been terminated by any truce, treaty of peace, or otherwise; (b) whenever the United States is engaged in active military operations against any foreign power, whether or not war has been formally declared; or (c) whenever the United States is assisting the United Nations, in actions involving

§ 161-161.1-161.2

the use of armed force, to maintain or restore international peace and security. [*Amended, 1935; 1941; 1943; 1944; 1952*]

SECTION 161.1. Any member so absent on military service may contribute to the retirement system during such absence, at times and in the manner prescribed by the board, amounts equal to the contributions which would have been made by him to the system on the basis of his compensation earnable at the commencement of his absence, if he had remained in city service.

Any member who makes the contributions as provided in the preceding paragraph shall receive credit for the absence as service in the manner as if he had not been absent. If, however, a member does not affirmatively exercise the option herein provided, or if he exercised it affirmatively and defaults in any of the contributions due to the retirement system under said election, and in either event if such contributions are not made for him, he shall be considered absent during the period for which no contributions are made, and he shall not receive credit as service for the city and county for such period; but the absence during such period shall not break the continuity of such service required of such member to entitle him to a retirement allowance, as provided under the retirement system.

Any member who was absent on military service and who did not make the contributions as provided in this section, and whose contributions are not paid for him by the city and county as provided herein, may make such contributions upon his return to city service at times and in the manner prescribed by the board. If he does so contribute, he shall receive credit for the absence as service in the same manner as if he had not been absent.

When a member makes the contributions as provided herein, the same contributions shall be made by the city and county in respect to such absence that would have been made if the member had not been absent on military service, except that such contributions shall be determined by the employer's rate of contribution in effect when such contributions are made, and on the basis of his compensation earnable at the commencement of his absence. [*New section, 1952*]

SECTION 161.2. Notwithstanding other provisions of this charter to the contrary, the city and county shall contribute for each member of this system who was absent on military service after

September 14, 1940, amounts equal to the contribution which would have been made by such member and the City and County of San Francisco on the basis of his compensation earnable at the commencement of his absence, provided that the member's base pay in such military service is less than \$100.00 per month, and provided, further (1) that if the absence in military service was by reason of service in the armed forces of the United States; (2) that the absence began on or after June 25, 1950; and (3) that the member's base pay in such service was less than \$250.00 per month, the city and county shall pay the contributions which would have been made by both the member and the city and county on the basis of his compensation earnable at the commencement of his absence. Contributions made by the city and county, in lieu of contributions which otherwise would be required of the member, shall be administered as if made by said member as normal contributions. Any such member who exercises or did exercise the right to contribute to the system during the period of absence on military service, and whose contributions otherwise would be paid by the city and county under this section, shall have his contributions plus credited interest, refunded. [*New section, 1952*]

Definition, Members of Fire and Police Departments

SECTION 162. For the purposes of the retirement system, any officer or employee of the police or the fire departments whose employment therein began prior to January 1, 1900, or whose employment therein began on or shall begin after that date and was or shall be subject to a charter maximum age at the time of employment of not over thirty-five years, shall be considered to be a member of the police department or the fire department, respectively. Any fire or police service outside the limits of the city and county performed by a member of the retirement system and under orders of a superior officer of any such member, shall be considered as city and county service, and any disability or death incurred therein shall be covered under the provisions of the retirement system.

Pensions of Retired Persons

SECTION 163. (a) No person retired for service or disability and in receipt of a retirement allowance under the retirement system shall serve in any elective or appointive position in the

city and county service, including membership on boards and commissions, nor shall such persons receive any payment for service rendered to the city and county after retirement, provided that service as an election officer or juror or in the preparation for or the giving of testimony as an expert witness for or on behalf of the City and County of San Francisco before any court or legislative or administrative body shall not be affected by this section or by section 165.2 (J), section 168.1.2 or section 171.1.12 of the charter.

(b) Should any retired person, except persons retired for service prior to January 8, 1932, and persons retired because of disability incurred in the performance of duty, engage in a gainful occupation prior to attaining the age of sixty-two, the retirement board shall reduce that part of his monthly pension or retirement allowance which is provided by contributions of the city and county, to an amount which, when added to the amount earned monthly by him in such occupation, shall not exceed the compensation on the basis of which his pension or retirement allowance was determined. [*Amended, 1945; 1958; 1959*]

Reading this section in connection with §§ 165, 166, and 167, only police officers on active duty on January 8, 1932, would become members of the retirement system provided by the new charter, and previously retired officers would not. **Sunder v. Collins** (1933) 219 Cal. 430, 27 Pac. (2d) 382.

The provisions of this section prohibiting a retired person from serving in any elective or appointive position does not apply to persons who are not members of the retirement system provided by the new charter but who were retired under the former charter. **Sunder v. Collins** (1933) 219 Cal. 430, 27 Pac. (2d) 382.

The provision of this section requiring the reduction of pensions when retired persons engage in gainful occupations is not subject to the objection that it is discriminatory and violates Const. Arts. I, § 11, by reason of the fact that by its terms it is inapplicable to persons over 62, those who retired on account of disability, or those under 62 whose income is not derived from gainful employment. **Brophy v. Employees Retirement System** (1945) 71 Cal. App. (2d) 455, 162 Pac. (2d) 939.

The pension of a fireman who was appointed prior to the operative date of the present charter, and who prior to that date had served a substantial part of the time required to entitle him to a pension was nonetheless subject to the provisions of this section requiring a reduction of a pension when a retired person engages in gainful occupation. **Brophy v. Employees Retirement System** (1945) 71 Cal. App. (2d) 455, 162 Pac. (2d) 939.

The 1945 amendment to the section, providing that it "shall be inoperative" during the existing war, etc., is not retroactive, and applies only from the date of the amendment to six months after the end of the war. **Brophy v. Employees Retirement System** (1945) 71 Cal. App. (2d) 455, 162 Pac. (2d) 939.

Contributions to Retirement Fund

SECTION 164. The city and county shall contribute jointly with the members of the retirement system to meet the liabilities accruing under the system because of service rendered to the city and county by persons after becoming members of the system. Members of the system shall contribute not to exceed ten per cent of their salaries or wages, provided that members may, at their option, elect to contribute at rates in addition to those fixed as normal by the retirement board. The city and county shall contribute an amount equal to normal contributions of members as provided for in the preceding sentence, but the city and county shall not contribute any amount because of additional contributions by members.

Miscellaneous Officers and Employees

SECTION 165. Officers and employees of the city and county, except members of the police and the fire departments, shall become members of the retirement system subject only to the following provisions, in addition to the provisions contained in sections 158 to 164, of this charter, both inclusive.

(a) The system shall be applied to such offices, departments, bureaus, or classes of officers or employees of the city and county, including teachers in the San Francisco school department, as the supervisors shall determine; provided, however, that the contributions to be made by said teachers and the benefits to be received by said teachers under said retirement system shall be based upon the proportion of salaries of said teachers which have been and shall be paid out of funds contributed by the city and county, excluding therefrom the portion of such salaries which have been or shall be paid out of funds contributed by the State of California; and in determining such proportion it shall be taken to be the same proportion which the whole amount of money contributed by the city and county to the common school fund in any fiscal year bears to the whole amount of money contributed to such fund in such year by the state and by the city and county; and provided, further, that nothing herein contained shall be construed to deprive any teacher of the right to receive benefits under any pension or retirement system now or hereafter established by the State of California.

(b) No member of the retirement system shall be retired, ex-

§ 165-165.1

cept in case of disability incapacitating him for the performance of his duties, unless he shall have attained the age of sixty-two years and completed ten years of continuous service, but retirement shall be compulsory at the age of seventy years. It may be provided, however, under such retirement system, that members may retire after thirty years of continuous service; the benefits at retirement in such cases to be determined, because of retirement at an age below sixty-two, in accordance with the tables recommended by the actuary and approved by said retirement board.

(c) All persons who were retired prior to October 1, 1925, from service as teachers in the public schools of San Francisco, under the provisions of the law of 1913, establishing the California Public School Teachers' Retirement Salary Fund, shall be entitled to and shall receive retirement allowances, to be calculated on the same basis as that established for determining the retirement allowances provided for members of the said retirement system.

Reading § 163 in connection with this section, §§ 166 and 167, only police officers on active duty on January 8, 1932, would become members of the retirement system provided by the new charter, and previously retired officers would not. **Sunder v. Collins** (1933) 219 Cal. 430, 27 Pac. (2d) 382.

The compulsory retirement provisions of this section are made to apply to all civil service employees without regard to age at the time of entering service. **Palmer v. Wolff** (1948) 88 Cal. App. (2d) 979, 200 Pac. (2d) 167.

Pacific Gas & Electric Company Employees

SECTION 165.1. The board of supervisors shall have the power to provide by ordinance retirement benefits for persons who become employees of the City and County of San Francisco under any lease, or other temporary arrangement, entered into between said city and county and the Pacific Gas & Electric Company, and because of their employment by said company at the effective date of said lease, or other temporary arrangement. The effect of said ordinance shall be to provide essentially the same retirement benefits for said employees on account of service rendered under said lease, or other temporary arrangement, as if said persons had been employees of said company throughout the term of said lease.

The further effect of said ordinance shall be to provide for permanent retirement rights for said persons, in the event they become employees of said city and county upon purchase or other permanent acquisition of the properties of said company, essen-

tially the same benefits on account of service rendered as employees of said city and county, as they would have received if they had been members throughout said service of the San Francisco City and County Employees' Retirement System on the same basis as other employees of said city and county, except members of fire or police departments. [*New section, 1941*]

**Retirement—Miscellaneous Officers and
Employees Prior to July 1, 1947**

SECTION 165.1.1. Every retirement allowance payable by the San Francisco City and County Employees' Retirement System, for time commencing on the effective date of this section, hereby designated as the first day of the month next following its ratification by the Legislature, to or on account of any person who was retired prior to July 1, 1947, as a member of said system under section 165, is hereby increased by the amount of twenty-five dollars per month, provided such member was entitled to be credited under the retirement system with at least twenty years of service upon which the retirement allowance was determined at retirement. If the member was entitled to be credited with less than twenty years of such service, then said monthly increases shall be an amount which shall bear the same ratio to twenty-five dollars that the service with which the member was entitled to be credited at effective date of retirement, bears to twenty years. This section does not give any member retired prior to the effective date hereof, or his successors in interest, any claim against the city and county for any increase in any retirement allowance paid or payable for time prior to said effective date. If a member elected at retirement to have his retirement allowance modified under Options 2 or 3, provided by ordinance, and if his beneficiary is living on said effective date, the increase in his allowance shall be modified under the option elected at retirement, and on the basis of current ages, mortality tables and interest rate. If the beneficiary of such a person who elected at retirement to have his allowance modified under one of said options is not living on said effective date, or if the retired member is not living on said effective date and the beneficiary is receiving the modified retirement allowance, then the allowance shall be increased as provided herein for persons who did not elect an option.

The increase in the retirement allowance shall be apportioned between service rendered prior to the entry of the member into

§ 165.1.1-165.1.2-165.1.3

the retirement system and service rendered as a member, in the same proportion that such prior and current service respectively, bears to the total service credited at retirement. Contributions to the retirement system necessary for the payment of the increases in the retirement allowances provided in this section, shall be provided, with respect to the portion of the benefit based on service rendered as members, from the reserves held by the retirement system on account of miscellaneous members, the necessary amount being transferred upon said effective date, from said reserves to the reserves held by the retirement system to meet the obligations on account of benefits that have been granted and on account of prior service of members. The contribution being required of the city currently, as percentages of salaries of persons who are members under section 165.2, shall be increased to percentages determined by the actuary as necessary to replace the reserves so transferred. Contributions to the retirement system necessary for the payment of said increases with reference to prior service, shall be paid to the system by the city and county by annual appropriations, provided that such appropriation for any year shall not be less than the amount disbursed during that year on account of said increases. [*New section, 1949*]

SECTION 165.1.2. *No section for this number.*

Retirement Continued—Increasing Retirement Allowances of Miscellaneous Officers and Employees Retired Prior to July 1, 1947

SECTION 165.1.3. Every retirement allowance payable by the San Francisco City and County Employees' Retirement System, for time commencing on the effective date of this section, hereby designated as the first day of the month next following its ratification by the Legislature, to or on account of any person who was retired prior to July 1, 1947, as a member of said system under section 165, is hereby increased by the amount of \$25 per month, provided such member was entitled to be credited under the retirement system with at least twenty years of service upon which the retirement allowance was determined at retirement. If the member was entitled to be credited with less than twenty years of such service, then said monthly increase shall be an amount which shall bear the same ratio to \$25 that the service with which the member was entitled to be credited at effective date of retirement, bears to twenty years. This section does not give any member

retired prior to the effective date hereof, or his successors in interest, any claim against the city and county for any increase in any retirement allowance paid or payable for time prior to said effective date. If a member elected at retirement to have his retirement allowance modified under Options 2 or 3, provided by ordinance, and if his beneficiary is living on said effective date, the increase in his allowance shall be modified under the option elected at retirement, and on the basis of current ages, mortality tables and interest rate. If the beneficiary of such a person who elected at retirement to have his allowance modified under one of said options is not living on said effective date, or if the retired member is not living on said effective date and the beneficiary is receiving the modified retirement allowance, then the allowance shall be increased as provided herein for persons who did not elect an option.

The increase in the retirement allowance shall be apportioned between service rendered prior to the entry of the member into the retirement system and service rendered as a member, in the same proportion that such prior and current service respectively, bears to the total service credited at retirement. Contributions to the retirement system necessary for the payment of the increases in the retirement allowances provided in this section, shall be provided, with respect to the portion of the benefit based on service rendered as members, from the reserves held by the retirement system on account of miscellaneous members, the necessary amount **being transferred** upon said effective date, from said reserves to the reserves held by the retirement system to meet the obligations on account of benefits that have been granted and on account of prior service of members. The contribution being required of the city currently, as percentages of salaries of persons who are **members under section 165.2**, shall be increased to percentages determined by the actuary as necessary to replace the reserves so transferred. Contributions to the retirement system necessary for the payment of said increases with reference to prior service, shall be paid to the system by the city and county by annual appropriations, provided that such appropriation for any year shall not be less than the amount disbursed during that year on account of said increases. [*New section, 1953*]

**Increasing Retirement Allowances of Miscellaneous Officers and
Employees Retired Under Section 165 of the Charter
Prior to July 1, 1952**

SECTION 165.1.4. Every retirement allowance payable by the San Francisco City and County Employees' Retirement System, for time commencing on the effective date of this section, hereby designated as the first day of the month next following its ratification by the Legislature, to or on account of any person who was retired prior to July 1, 1952, as a member of said system under Section 165, is hereby increased by the amount of \$25 per month, provided such member was entitled to be credited under the retirement system with at least twenty years of service upon which the retirement allowance was determined at retirement. If the member was entitled to be credited with less than twenty years of such service, then said monthly increase shall be an amount which shall bear the same ratio to \$25 that the service with which the member was entitled to be credited at effective date of retirement, bears to twenty years. This section does not give any member retired prior to the effective date hereof, or his successors in interest, any claim against the city and county for any increase in any retirement allowance paid or payable for time prior to said effective date. If a member elected at retirement to have his retirement allowance modified under Options 2 or 3, provided by ordinance, and if the member and his beneficiary are living on said effective date, the increase in the allowance shall be modified under the option elected at retirement, and on the basis of current ages, mortality tables and interest rate. If the beneficiary of such a person who elected at retirement to have his allowance modified under one of said options is not living on said effective date, or if the retired member is not living on said effective date and the beneficiary is receiving the modified retirement allowance, then the allowance shall be increased as provided herein for persons who did not elect an option.

The increase in the retirement allowance shall be apportioned between service rendered prior to the entry of the member into the retirement system and service rendered as a member, in the same proportion that such prior and current service respectively, bears to the total service credited at retirement. Contributions to the retirement system necessary for the payment of the increases in the retirement allowances provided in this section, shall be

provided, with respect to the portion of the benefit based on service rendered as members, from the reserves held by the retirement system on account of miscellaneous members, the necessary amount being transferred upon said effective date, from said reserves to the reserves held by the retirement system to meet the obligations on account of benefits that have been granted and on account of prior service of members. The contribution being required of the city currently, as percentages of salaries of persons who are members under section 165.2, shall be increased to percentages determined by the actuary as necessary to replace the reserves so transferred. Contributions to the retirement system necessary for the payment of said increases with reference to prior service, shall be paid to the system by the city and county by annual appropriations, provided that such appropriation for any year shall not be less than the amount disbursed during that year on account of said increases. [*New section, 1956*]

**Retirement—Miscellaneous Officers and Employees
On and After July 1, 1947**

SECTION 165.2. Miscellaneous officers and employees, as defined in this section, who are members of the retirement system under section 165 of the charter on the effective date hereof, hereby designated as the first day of July, 1947, and persons who become miscellaneous officers and employees after said effective date, shall be members of the retirement system on and after said date, subject to the following provisions of this section, in addition to the provisions contained in sections 158 to 161, both inclusive, of this charter notwithstanding the provisions of any other section of the charter, provided that the retirement system shall be applied to persons employed on a part-time, temporary or substitute basis only as the board of supervisors shall determine by ordinance enacted by three-fourths vote of all members of the board. Miscellaneous officers and employees of the said departments who are members of the retirement system under section 165 of the charter on said effective date, however, shall have the option to be exercised in writing on a form furnished by the retirement system and to be filed at the office of said system not later than ninety days after the effective date hereof, of being members of the system under section 165 instead of this section, the election under said option to be effective on said effective date,

§ 165.2

provided, that members who are absent by reason of service in the armed forces of the United States or by reason of any other service included in section 161 of the charter, on the effective date of the amendment, shall have the same option of electing to be members under section 165 instead of this section, until ninety days after their return to service. On and after said date, the persons who affirmatively exercise said option, shall continue to be members of the system under section 165 and shall not be subject to any of the provisions of this section.

(A) The following words and phrases as used in this section, unless a different meaning is plainly required by the context, shall have the following meaning:

“Retirement allowance,” or “allowance,” shall mean equal monthly payments, beginning to accrue upon the date of retirement, and continuing for life unless a different term of payment is definitely provided by the context.

“Compensation,” as distinguished from benefits under the workmen’s compensation laws of the State of California, shall mean all remuneration whether in cash or by other allowances made by the city and county, for service qualifying for credit under this section, excluding that part of such remuneration which exceeds \$500.00 per month, unless the board of supervisors shall otherwise provide by ordinance enacted by three-fourths vote of all members of the board.

“Compensation earnable” shall mean the compensation as determined by the retirement board, which would have been earned by the member had he worked, throughout the period under consideration, the average number of days ordinarily worked by persons in the same grade or class of positions as the positions held by him during such period and at the rate of pay attached to such positions, it being assumed that during any absence, he was in the position held by him at the beginning of the absence, and that prior to entering city service he was in the position first held by him in city-service.

“Benefit” shall include “allowance,” “retirement allowance,” and “death benefit.”

“Average final compensation” shall mean the average monthly compensation earned by a member during any five consecutive

years of credited service in the retirement system in which his average final compensation is the highest, excluding that part of such remuneration which exceeds \$500.00 per month, unless the board of supervisors shall otherwise provide by ordinance enacted by three-fourths vote of all members of the board.

For the purposes of the retirement system and of this section, the terms "miscellaneous officer or employee," or "member," as used in this section shall mean any officer or employee who is not a member of the fire or police departments as defined in the charter for the purpose of the retirement system, under section 165 of the charter.

"Retirement system" or "system" shall mean San Francisco City and County Employees' Retirement System as created in section 158 of the charter.

"Retirement board" shall mean "retirement board" as created in section 159 of the charter.

"Charter" shall mean the charter of the City and County of San Francisco.

Words used in the masculine gender shall include the feminine and neuter genders, and singular numbers shall include the plural and the plural the singular.

"Interest" shall mean interest at the rate adopted by the retirement board.

(B) Any member who completes at least twenty years of service in the aggregate credited in the retirement system and attains the age of fifty-five years, or at least ten years of service in the aggregate credited in the retirement system, and attains the age of sixty years, said service to be computed under subsection (G) hereof, may retire for service at his option. Members shall be retired on the first day of the month next following the attainment by them of the age of seventy years during the twelve months ending June 30, 1948; the age of sixty-nine years during the twelve months ending June 30, 1949; the age of sixty-eight years during the twelve months ending June 30, 1950; the age of sixty-seven years during the twelve months ending June 30, 1951; the age of sixty-six years during the twelve months ending June 30, 1952; and thereafter, following the attainment of the age of sixty-

five years. A member retired after reaching the age of sixty years shall receive a service retirement allowance at the rate of $1\frac{2}{3}$ per cent of said average final compensation, for each year of service. The service retirement allowance of any member retiring prior to attaining the age of sixty years, after rendering twenty years or more of such service and having attained the age of fifty-five years, computed under subsection (G), shall be such as can be provided at the age of retirement by the actuarial value, at the age of retirement, of the retirement allowance to which he would be entitled upon retirement at age sixty and with the service credited at the date of actual retirement. Before the first payment of a retirement allowance is made, a member retired under this subsection or subsection (C) of this section, may elect to receive the actuarial equivalent of his allowance, partly in an allowance to be received by him throughout his life, and partly in other benefits payable after his death to another person or persons, provided that such election shall be subject to all the conditions prescribed by the board of supervisors to govern similar elections by other members of the retirement system, including the character and amount of such other benefits. The portion of service retirement allowance provided by the city and county's contributions shall be not less than \$50 per month upon retirement after thirty years of service and after attaining the age of sixty years, and provided further that as to any member with fifteen years or more of service at the compulsory retirement age of sixty-five, the portion of the service retirement allowance provided by the city and county's contribution shall be such that the total retirement allowance shall not be less than \$50.00 per month. In the calculations under this subsection of the retirement allowance of a member having credit for service in a position in the evening schools and service in any other position, separate retirement allowances shall be calculated, in the manner prescribed for each class of service, the average final compensation in each case being that for the respective class of service; provided that the aggregate retirement allowance shall be taken into account in applying the provisions of this subsection providing for a minimum retirement allowance. Part time service and compensation shall be reduced to full time service and compensation in the manner prescribed by the board of supervisors, and when so reduced shall be applied on full time service and compensation in the calculation of retirement allowances.

(C) Any member who becomes incapacitated for performance of duty because of disability determined by the retirement board to be extended and uncertain duration, and who shall have completed at least ten years of service credited in the retirement system in the aggregate, computed as provided in subsection (G) hereof, shall be retired upon an allowance of one and one-half per cent of the average final compensation of said member, as defined in subsection (A) hereof for each year of credited service, if such retirement allowance exceeds one-third ($\frac{1}{3}$) of his average final compensation; otherwise one and one-half ($1\frac{1}{2}$) per cent of his average final compensation multiplied by the number of years of city-service which would be credited to him were such city-service to continue until attainment by him of age sixty, but such retirement allowance shall not exceed one-third ($\frac{1}{3}$) of such average final compensation. In the calculation under this subsection of the retirement allowance of a member having credit for service in a position in the evening schools and service in any other position, separate retirement allowances shall be calculated, in the manner prescribed, for each class of service, the average final compensation in each case being that for the respective class of service; provided that the average final compensation upon which the minimum total retirement allowance is calculated in such case shall be based on the compensation earnable by the member in the classes of service rendered by him during the five (5) years immediately preceding his retirement. Part time service and compensation shall be reduced to full time service and compensation in the manner prescribed by the board of supervisors, and when so reduced shall be applied as full time service and compensation in the calculation of retirement allowances. The question of retiring a member under this subsection may be brought before the retirement board on said board's own motion, by recommendation of any commission or board, or by said member or his guardian. If his disability shall cease, his retirement allowance shall cease, and he shall be restored to service in the position or classification he occupied at the time of his retirement.

(D) No modification of benefits provided in this section shall be made because of any amounts payable to or on account of any member under workmen's compensation laws of the State of California.

(E) If a member shall die, before his retirement, regardless of cause, a death benefit shall be paid to his estate or designated beneficiary consisting of the compensation earnable by him during the six months immediately preceding death, plus his contributions and interest credited thereon. Upon the death of a member after retirement and regardless of the cause of death, a death benefit shall be paid to his estate or designated beneficiary in the manner and subject to the conditions prescribed by the board of supervisors for the payment of a similar benefit upon the death of other retired members.

(F) Should any miscellaneous member cease to be employed as such a member, through any cause other than death or retirement, all of his contributions, with interest credited thereon, shall be refunded to him subject to the conditions prescribed by the board of supervisors to cover similar terminations of employment and re-employment with and without re-deposits of withdrawn accumulated contributions of other members of the retirement system, provided that if such member is entitled to be credited with at least ten years of service, he shall have the right to elect, without right of revocation and within 90 days after said termination of service, or if the termination was by lay-off, 90 days after the retirement board determines the termination to be permanent, whether to allow his accumulated contributions to remain in the retirement fund and to receive benefits only as provided in this paragraph. Failure to make such election shall be deemed an irrevocable election to withdraw his accumulated contributions. Upon the qualification of such member for retirement by reason of service and age, he shall be entitled to receive a retirement allowance which shall be the actuarial equivalent of his accumulated contributions and equal amount of the contributions of the city and county, plus $1\frac{2}{3}$ per cent of his average final compensation for each year of service credited to him as rendered prior to his first membership in the retirement system. Upon the death of such member prior to retirement, his contributions with interest credited thereon shall be paid his estate or designated beneficiary.

(G) The following time and service shall be included in the computation of the service to be credited to a member for the

purpose of determining whether such member qualifies for retirement and calculating benefits:

(1) Time during which said member is a member of the retirement system and during and for which said member is entitled to receive compensation because of services as a miscellaneous officer or employee.

(2) Service in the fire and police departments which is not credited as service of a member under this section shall count under this section upon transfer of a member of either of such departments to employment entitling him to membership in the retirement system under this section, provided that the accumulated contribution standing to the credit of such member shall be adjusted by refund to the member or by payment by the member to bring the account at the time of such transfer to the amount which would have been credited to it had the member been a miscellaneous employee throughout the period of his service in either of such departments at the compensation he received in such departments.

(3) Time during which said member is absent from a status included in paragraphs (1) or (2) next preceding which is not deemed absence from service under the provisions of section 161 of the charter and for which such member is entitled to receive credit as service for the city and county by virtue of contributions made in accordance with the provisions of such section.

(4) Prior service determined and credited as prescribed by the board of supervisors for persons who are members under section 165.

(H) All payments provided under this section shall be made from funds derived from the following sources, plus interest earned on said funds:

(1) The rate of contribution of each member under this section shall be based on his nearest age at the effective date of his membership in the retirement system. The normal rate of contribution of each such member, to be effective from the effective date of membership under this section, shall be such as, on the average for such member, will provide, assuming service without interruption, under subsection (B) of this section, one-half of that portion of the service retirement allowance to which he

would be entitled if retired at age sixty or higher age after rendering ten years of service for retirement under that subsection. No adjustment shall be included in said rates because of time during which members have contributed at different rates. Members' rates of contributions shall be changed only in the manner prescribed by the board of supervisors for changing contribution rates of other members.

(2) There shall be deducted from each payment of compensation made to a member under this section, a sum determined by applying the member's rate of contribution to such compensation. Amounts which would have been deducted in the absence of the limit on such deductions according to service credited, shall be paid to the retirement system following the removal of such limit, in manners and at times approved by the retirement board. The sum so deducted shall be paid forthwith to the retirement system. Said contribution shall be credited to the individual account of the member from whose salary it was deducted, and the total of said contributions, together with interest credited thereon in the same manner as is prescribed by the board of supervisors for crediting interest to contributions of other members of the retirement system, shall be applied to provide part of the retirement allowance granted to, or allowance granted on account of said member, under this section or shall be paid to said member or his estate or beneficiary as provided in subsections (E) and (F) of this section, provided that the portion of the salaries of the teachers as provided in section 165, paragraph (a), as a basis for fixing the contributions to be made, and the benefits to be received, by the teachers under the retirement system shall be determined by the method provided in section 165, paragraph (a) and shall not be less than eighty per cent of the total salary received by the teachers, excluding that part of such portion which exceeds \$500.00 per month, unless the board of supervisors shall otherwise provide by ordinance enacted by three-fourths vote of all members of the board.

(3) Contributions based on time included in paragraphs (1) and (3) of subsection (G), and deducted prior to the effective date hereof, from compensation of persons who become members under this section, and standing with interest thereon, to the credit of such members on the records of the retirement

system on said date, shall continue to be credited to the individual accounts of said members and shall be combined with and administered in the same manner as the contributions deducted after said date.

(4) The total contributions, with interest thereon, made by or charged against the city and county and standing to its credit, on the effective date hereof, in the accounts of the retirement system, on account of persons who become members under this section, shall be applied to provide the benefits under this section.

(5) The city and county shall contribute to the retirement system such amounts as may be necessary, when added to the contributions referred to in the preceding paragraphs of this subsection (H), to provide the benefits payable under this section. Such contributions of the city and county to provide the portion of the benefits hereunder which shall be based on service rendered by each member prior to the date upon which his rate of contribution is determined in paragraph (1), subsection (H), shall not be less during any fiscal year than the amount of such benefits paid during said year. Such contributions of the city and county to provide the portion of the benefits hereunder which shall be based on service rendered by respective members on and after the date stated in the next preceding sentence, shall be made in annual installments, and the installment to be paid in any year shall be determined by the application of a percentage to the total salaries paid during said year, to persons who are members under this section, said percentage to be the ratio of the value of the effective date hereof, or at the later date of a periodical actuarial valuation and investigation into the experience under the system as provided by the board of supervisors, of the benefits thereafter to be paid under this section, from contributions of the city and county, less the amount of such contributions, and plus accumulated interest thereon, then held by said systems to provide said benefits on account of service rendered by respective member after the date stated in the sentence next preceding, to the value at said respective dates of salaries thereafter payable to said members. Said values shall be determined by the actuary, who shall take into account the interest which shall be earned on said contributions, the compensation experience of members, and the probabilities of sep-

aration by all causes, of members from service before retirement and of death after retirement. Said percentage shall be changed only on the basis of said periodical actuarial valuation and investigation into the experience under the system.

(6) To promote the stability of the retirement system through a joint participation in the result of variations in the experience under mortality, investment and other contingencies, the contributions of both members and the city and county held by the system to provide the benefits under this section, shall be a part of the fund in which all other assets of said system are included. Nothing in this section shall affect the obligations of the city and county to pay to the retirement system any amounts which may or shall become due under the provisions of the charter prior to the effective date hereof, and which are represented on said effective date, in the accounts of said system by debits against the city and county.

(I) Upon the completion of the years of service set forth in subsection (B) of this section as requisite to retirement, a member shall be entitled to retire at any time thereafter in accordance with the provisions of said subsection (B), and nothing shall deprive said member of said right.

(J) No person retired under this section, for service or disability and entitled to receive a retirement allowance under the retirement system shall serve in any elective or appointive position in the city and county service, including membership on boards and commissions, nor shall such persons receive any payment for service rendered to the city and county after retirement, provided that service as an election officer or juror shall not be affected by this section.

Should any such retired person engage in gainful occupation prior to attaining the age of sixty years, the retirement board shall reduce that part of his monthly pension or retirement allowance which is provided by contributions of the city and county, to an amount which, when added to the amount earned monthly by him in such occupation, shall not exceed his compensation at the time of his retirement.

(K) Any section or part of any section in this charter, insofar as it should conflict with this section, or with any part thereof,

shall be superseded by the contents of this section. In the event that any word, phrase, clause or subsection of this section shall be adjudged unconstitutional, the remainder thereof shall remain in full force and effect. [*New section, 1947; amended, 1948*]

Cited in **Carey v. Retirement Board of San Francisco** (1955) 131 Cal. App. (2d) 739, 281 Pac. (2d) 25.

SECTION 165.2.1. Every retirement allowance payable by the San Francisco City and County Employees' Retirement System, for time commencing on the effective date of this section, hereby designated as the first day of the month next following its ratification by the Legislature, to or on account of any person who was retired prior to July 2, 1952, as a member of said system under section 165.2, and to or on account of any person who was retired prior to July 2, 1952, but not prior to July 1, 1952, as a member of said system under section 165, is hereby increased by the amount of \$25 per month, provided such member was entitled to be credited under the retirement system with at least twenty years of service upon which the retirement allowance was determined at retirement. If the member was entitled to be credited with less than twenty years of such service, then said monthly increase shall be an amount which shall bear the same ratio to \$25 that the service with which the member was entitled to be credited at effective date of retirement, bears to twenty years. This section does not give any member retired prior to the effective date hereof, or his successors in interest, any claim against the city and county for any increase in any retirement allowance paid or payable for time prior to said effective date. If a member elected at retirement to have his retirement allowance modified under Option 2 or 3, provided by ordinance, and if the member and his beneficiary are living on said effective date, the increase in the allowance shall be modified under the option elected at retirement, and on the basis of current ages, mortality tables and interest rate. If the beneficiary of such a person who elected at retirement to have his allowance modified under one of said options is not living on said effective date, or if the retired member is not living on said effective date and the beneficiary is receiving the modified retirement allowance, then the allowance shall be increased as provided herein for persons who did not elect an option.

The increase in the retirement allowance shall be apportioned between service rendered prior to the entry of the member into the retirement system and service rendered as a member, in the

same proportion that such prior and current service respectively, bears to the total service credited at retirement. Contributions to the retirement system necessary for the payment of the increases in the retirement allowances provided in this section, shall be provided, with respect to the portion of the benefit based on service rendered as members, from the reserves held by the retirement system on account of miscellaneous members, the necessary amount being transferred upon said effective date, from said reserves to the reserves held by the retirement system to meet the obligations of the city and county on account of benefits that have been granted and on account of prior service of members. The contribution being required of the city and county currently as percentages of salaries of persons who are members under section 165.2, shall be increased to percentages determined by the actuary as necessary to replace the reserves so transferred. Contributions to the retirement system necessary for the payment of said increases with reference to prior service, shall be paid to the system by the city and county by annual appropriations, provided that such appropriation for any year shall not be less than the amount disbursed during that year on account of said increases. [*New section, 1957*]

Relinquishment of Certain Retirement Allowances

SECTION 165.3. Any person who retired under the San Francisco City and County Employees' Retirement System from an employment status in which he was a member of the State Teachers' Retirement System, and whose retirement was effective after June 30, 1955, and not later than ninety days after the effective date of this section, hereby designated as the first day of the month next following its ratification by the legislature, may elect, in writing on a form provided by the retirement system and to be filed at the office of said system within ninety days after the effective date of this section, to relinquish his right to a retirement allowance from said City and County Employees' Retirement System. If such person so elects to relinquish said right, his retirement allowance shall be cancelled forthwith and no payments of such allowance shall be made to him, or on his account, for time on and after the effective date of such election, and such election shall be irrevocable. The San Francisco City and County Employees' Retirement System shall pay or be liable to pay to or on account of such person only an amount equal to the actuarial equivalent, as of the effective date of such relinquishment, and on the basis of the mortality tables and interest rate

then used under the system, of the portion of the cancelled allowance which was provided by said person's accumulated contributions at the effective date of his retirement. An amount equal to such actuarial equivalent shall be forwarded forthwith to the Retirement Annuity Fund of said State Teachers' Retirement System, to be applied on the amount due to said fund from said person under the provisions of Division (7), Chapter 14 of the Education Code of the State of California, but not to exceed the amount so due as may be quoted in a written statement requested of and received from said State Teachers' Retirement System as applied to any person herein involved. Any excess of the actuarial equivalent over said amount so quoted as due shall be paid forthwith to said person. [New section, 1957]

**Credit on Current Contributions, for Certain Public Reserves Released
by Withdrawal or Relinquishment by Retiring or Retired Teachers**

SECTION 165.4. In the event that any teacher or other employee of the board of education resigns and withdraws during or after the fiscal year which will end June 30, 1957, his accumulated contributions from the San Francisco City and County Employees' Retirement System, and instead within 90 days after such withdrawal is in the status of a person retired under the State Teachers' Retirement System of California on an allowance based on the full allowance formulae under said state system, the contributions which the San Francisco Unified School District is required to make to said City and County Employees' Retirement System on account of service rendered by employees of such unified school district as such members of such system, in accordance with the rate of contribution determined under paragraph (5), subdivision (H) of section 165.2 of the charter, shall be reduced by an amount equal to the actuarial equivalent as of the day next following the date of such withdrawal, of the portion of the allowance to which such person would have been entitled from said City and County Employees' Retirement System, if he had not resigned, and which would have been based on his service as a member of such City and County Employees' Retirement System, minus the amount of his accumulated normal contributions withdrawn.

In the event that any person retired under the San Francisco

City and County Employees' Retirement System from an employment status in which he was a member of the State Teachers' Retirement System, has elected or elects to relinquish his right to a retirement allowance from said City and County Employees' Retirement System, the contributions which the San Francisco Unified School District is required to make to the City and County Employees' Retirement System on account of service rendered by employees of such unified school district as members of such system in accordance with the rate of contribution determined under paragraph (5), subdivision (H) of section 165.2 of the charter, shall be reduced by an amount equal to the actuarial equivalent as of the effective date of such relinquishment, and as determined in connection with such relinquishment, of the portion of the allowance to which said person would have been entitled had he not so elected, and which was based on his service as a member of the City and County Employees' Retirement System, minus the actuarial equivalent determined in connection with such relinquishment of the portion of the cancelled allowance which was provided by said person's accumulated normal contributions at the effective date of his retirement.

If the total of the actuarial equivalents by which the contributions required of the San Francisco Unified School District in any year are to be reduced, exceeds such contributions, the amount of the excess shall be carried over to subsequent fiscal years and applied to reduce such contributions for such years in chronological order. [*New section, 1958*]

SECTION 165.5. *No section for this number.*

Social Security Coverage

SECTION 165.6. The board of supervisors may enact, by a vote of three-fourths of its members, an ordinance or ordinances prescribing the conditions according to which any and all employees of the San Francisco Unified School District and employees of the City and County of San Francisco, other than members of the fire and police department as defined in section 162, may be covered under the Federal Old-Age and Survivors Disability Insurance provisions of the Federal Social Security Act, subject to the pro-

visions of this section. "City and county" as hereinafter used shall mean the City and County of San Francisco and the San Francisco Unified School District.

(A) Any member of the San Francisco City and County Employees' Retirement System, hereinafter referred to as the system, who becomes covered by the Federal Old-Age and Survivors Disability Insurance provisions of the Federal Social Security Act, hereinafter referred to as the Act, on account of service rendered by him to the city and county, shall have the allowance payable by the system to him upon retirement for disability after attaining age 55, or for service, reduced in the following manner:

While payable to said member, and effective (1) when he attains the retirement age as defined from time to time in the Act, said age to be analogous to the retirement age of 65 years for men and 62 years for women in the Act on the effective date of this section, or (2) on the effective date of his retirement under the system, whichever is later, by an amount which shall bear the same ratio to one-half of the primary old age insurance benefits under the Act paid to him or payable upon being applied for, or that would be payable if he had not disqualified himself to receive them, under the Act as in effect on the effective date hereof, or as the Act may hereafter be amended or supplemented before the effective date of such reduction, as the salary paid to him on account of service credited to him under the system and entering into the determination of said primary benefit bears to the total of his salary, from whatever source, entering into said determination; provided, however, that the amount of the reduction under this paragraph shall not exceed the portion of the retirement allowance, prior to modification under an option provided by ordinance, which is not derived from contributions of said member.

(B) Every such member shall continue to contribute to the system the normal contributions required of him, except that he shall have the right to reduce his normal contributions under the system at his option to be exercised by an election on the system's form, said election to be effective on the first day of the month next following its filing in the system's office. Such reduction of normal contributions shall apply only to time during which said member is covered under the Act, and after the effective date of

this section, hereby fixed as the first day of the month next following its ratification by the State Legislature, and the amount of said reduction, which may be changed from time to time by said member, in accordance with rules and regulations of the Retirement Board, shall not be more than the amount of said member's contribution under the Act.

Any allowance payable to or on account of such member by the system shall be reduced in addition to the reduction in the preceding paragraph (A), on the effective date of said allowance by the actuarial equivalent on that date of the normal contributions, including interest to said date, with which said member would have been but was not credited under the system because of said reduction in his normal contributions and because of amounts paid from such member's accumulated contributions for the retroactive period hereinafter provided for, and any continuation of said allowance shall be based on such reduced allowance but said allowance shall not be affected otherwise by the member's reduction of his normal contributions. Said member shall have the right to contribute amounts, which shall be administered as additional contributions, to replace all or part of such reduction in his retirement allowance.

(C) The reductions in allowances and contributions of members shall be made as provided in the foregoing paragraphs, notwithstanding any provisions in the charter to the contrary.

(D) Every employee covered by the agreement providing coverage under the Act shall be liable for the employee contributions required by the Act.

(E) The effective date of coverage under the Act may be made retroactive to such date as the board of supervisors may determine. Contributions required under the Act of each member for time included by the retroactive application shall be paid from such member's accumulated contributions held by the system on account of his compensation not in excess of the maximum compensation taxable under this Act for such retroactive time. If the required contributions under the Act exceed the member's accumulated contributions held by the system so determined, the additional contributions under the Act equal to the excess shall be paid by the member. Contributions required under the Act of the employer on account of such retroactive period shall be paid

from funds held by the system on account of active members and derived from contributions of the city and county.

(F) Any member who is covered by section 210 (1) of the Act on the effective date of the agreement between the state and federal government to extend coverage to the members of the system under the Act shall not be subject to this section unless he elect to be covered in accordance with this section, such election to be on a form furnished by the system and to be filed in the office of the system not later than one hundred eighty (180) days after the effective date of such agreement. Such election shall be irrevocable. Such election shall fix the status of the member under such coverage as the same in all respects as if he had not been covered under section 210 (1), except that there shall be no adjustment of the member's accumulated contributions or of the funds held by the system, and derived from contributions of the city and county, on account of social security tax for such retroactive period.

Each member who enters the employ of the municipal railway after the effective date of the agreement between the state and federal government to extend coverage to other members of the system under the Act shall be covered under the Act in accordance with the terms of this section and the ordinance or ordinances enacted pursuant thereto.

(G) The sum of the member's allowance under the system, prior to modification under an option provided by ordinance, or as provided for in this paragraph, and his primary benefit under the Act, payable after attainment of the minimum age of qualification for such primary benefit, shall not be less than the allowance which he would have received under the system, assuming that he had not been covered under the Act. Provision shall be made for modification of the member's retirement allowance at his option, if he retires before he attains such minimum age, in such manner that will make his increased monthly retirement allowance under the system prior to attainment of such age equal to the sum of his decreased monthly allowance after attainment of such age, and his primary benefit under the Act, upon the basis of an estimated primary benefit under the Act, subject to the requirement that the amounts of the increase and decrease in the monthly allowance shall be actuarially equivalent, and that the

increase shall not be modified under an option provided by ordinance.

(H) Words used in the masculine gender shall include the feminine and neuter genders, and singular numbers shall include the plural and the plural the singular.

(I) The contribution rates of the city and county applicable to various memberships under section 165.2 shall be adjusted to rates determined by the actuary according to methods stated in paragraph 5, subsection (H) of section 165.2.

(J) The board of supervisors shall submit to the eligible employees for purposes of referendum as defined in the Act the question as to whether they desire coverage under the Act in accordance with conditions prescribed in this section.

(K) The powers of the board of supervisors granted in section 158 shall include the authority to make such adjustments in the retirement system, by a vote of three-fourths of its members, as are not made by this section, but as required because of changes in the Act, to carry out the purposes of this section. [*New section, 1959*]

Present Police Department Members

SECTION 166. Persons who are members of the police department on the 8th day of January, 1932, shall become members of the retirement system on that date, subject to the following provisions in addition to the provisions contained in sections 158 to 163, both inclusive, of this charter:

(a) Any member of the department who has arrived or shall arrive at the age of sixty-two years, and who has completed thirty years of continuous service as an active member of the department next preceding his retirement, may retire from service at his option, provided that retirement shall be compulsory at the age of seventy years. Such retired member shall receive a monthly pension, payable throughout his life, equal to one-half of the amount of the monthly salary attached to the rank held by him three years prior to the date of his retirement, hereinafter referred to in this section and section 167 as a "pension."

Before the first payment of the pension is made, such retired member may elect to receive the actuarial equivalent of his pension, partly in a pension to be received by him throughout his life,

and partly in other benefits payable after his death to another person or persons, provided that such election shall be subject to all the conditions prescribed by the board of supervisors to govern similar elections by other members of the retirement system, including the character and amount of such other benefits.

(b) Any member of the department who shall become physically disabled by reason of any bodily injury received in the performance of his duty, may be retired upon a monthly pension, as defined in subdivision (a), of this section, payable throughout his life. In case his disability shall cease, his pension shall cease, and he shall be restored to the service in the rank he occupied at the time of his retirement.

(c) The family of any member of the department who may be killed or injured while in the performance of his duties, and who shall have died within three (3) years from the date of such injury as a result of such injury, shall receive the following benefits and the receipt by such member of a pension under this section during his lifetime shall not bar said family from such benefits:

First, should the decedent leave a widow to whom he was married prior to the date of the injury resulting in death, such widow shall, as long as she may live and remain unmarried, be paid a monthly pension equal to one-half of the salary attached to the rank held by the decedent at the time of his said injury; provided, however, that should said widow die, leaving a child or children under the age of sixteen years, said pension shall continue to such child or such children collectively until the youngest child arrives at the age of sixteen years.

Second, should the decedent leave no widow, but leave an orphan child or children under the age of sixteen years, such child or children collectively shall receive a monthly pension equal to one-half of the salary attached to the rank held by their father at the time of his said injury until the youngest attains the age of sixteen years.

Third, should the decedent leave no widow and no orphan child or children, but leave a parent or parents depending solely upon him for support, such parents, so depending, shall collectively receive a monthly pension equal to one-half of the salary attached

to the rank held by the decedent at the time of his said injury during such time as the retirement board may unanimously determine its necessity.

(d) A sum equal to the contributions, with interest, made by persons who become members of the retirement system under this section to any other pension fund shall be paid by the city and county to the retirement system. Each member of the department shall contribute two dollars (\$2) per month to the retirement system to be applied on the cost of the benefits at death and retirement provided under this section. Should a member be separated from city service through any cause other than death or retirement, then such contributions with interest shall be refunded to him under such conditions as may be fixed by the board of supervisors for the refund of contributions of other members of the retirement system.

(e) When any member of the department shall die from natural causes and before retirement, there shall be paid to his estate or beneficiary a death benefit, the amount of which and the conditions for the payment of which shall be determined in the manner prescribed by the board of supervisors for the death benefit of other members of the retirement system.

(f) In addition to the other contributions required of the city and county under the retirement system, the city and county shall contribute to the retirement system during each fiscal year a sum which, together with the members' contributions provided for in subdivision (d) of this section, shall be equal to the liabilities accruing under the retirement system because of the service rendered during such year by persons becoming members on the 8th day of January, 1932, under this section. If, subsequent to such fiscal year, it shall be determined that such contributions by the city and county, together with the members' contributions, was not sufficient to meet such liability, then the city and county shall make such additional contributions as may be necessary to make up the deficit.

(g) No benefits shall be provided under the retirement system for, nor shall any contribution be required of, persons who become members of the retirement system under this section, in addition to the benefits specifically provided and contributions specifically required in such section.

That portion of any pension payable because of the death or retirement of any of such persons which is provided by contributions of the city and county shall be reduced, in the manner fixed by the board of supervisors, by the amount of any benefits payable to or on account of such person, under the workmen's compensation insurance and safety law of the State of California.

(h) Persons who were members of the police department on the 8th day of January, 1932, shall have the option, to be exercised in writing on or before the 1st day of January, 1936, of becoming members of the retirement system under the provisions of section 168, which applies to persons who become members of the department after the 8th day of January, 1932. If such persons shall affirmatively exercise such option within the time specified, then on and after the first day of the month next following such affirmative action, referred to hereinafter in this subdivision (h) as "effective date," they shall not receive any benefit or make any contribution under this section, but on and after said effective date shall be members of the retirement system and shall receive benefits and make contributions on the same basis as persons who become members of the department after the 8th day of January, 1932, provided that a pension for each person affirmatively exercising such option shall be payable on account of service rendered to the city and county prior to said effective date, by such members' contributions made prior to such effective date, with interest, and by contributions of the city and county, which pension shall be the same percentage, regardless of the age of retirement, of his final compensation, as defined by the board of supervisors, for each year of such service, as the contributions of the member and the city and county are calculated to provide upon retirement at age sixty-two for each year of service rendered as a member of the retirement system. [*Amended, 1935*]

Where an officer dies as a result of a pre-existing disease of the heart and it is established that the disease has been aggravated and death accelerated or precipitated by exertion in performing the duties of his office, the case falls within the scope of this section and his widow is entitled to the benefits which it grants. **Naughton v. Retirement Board** (1941) 43 Cal. App. (2d) 254, 110 Pac. (2) 714; **Buckley v. Roche** (1931) 214 Cal. 241, 4 Pac. (2d) 929.

Reading § 163 in connection with § 165, this section and § 167, only police officers on active duty on January 8, 1932, would become members of the retirement system provided by the new charter, and

§ 166-166.1

previously retired officers would not. **Sunder v. Collins** (1933) 219 Cal. 430, 27 Pac. (2d) 382.

Cited in **Groat v. Walkup Drayage & Warehouse Co.** (1936) 14 Cal. App. (2d) 350, 58 Pac. (2d) 200.

Cited in **Carey v. Retirement Board of San Francisco** (1955) 131 Cal. App. (2d) 739, 281 Pac. (2d) 25.

Former charter, with corresponding or similar provision, cited: § 4, ch. 10, Art. VIII, pensions to widows, **Bennett v. Brady** (1936) 17 Cal. App. (2d) 114, 61 Pac. (2d) 530.

Salary Base, for Retirement Purposes, of Former Rank of Corporal of Police

SECTION 166.1. For all purposes of the retirement system, and notwithstanding any other provisions of the charter, the monthly salary attached to the former rank of corporal, heretofore held by a member of the police department, shall henceforth be deemed to be an amount equal to the maximum monthly salary attached to the rank of police officer, plus three-fourths of the difference between such amount and the monthly salary attached to the rank of sergeant. [*New section, 1948*]

**Present Retired Members and Present Beneficiaries,
Police Department**

SECTION 167. Any member of the police department who shall have been retired and shall be receiving a pension on the 8th day of January, 1932, and any widow, child, children or parents of a deceased member of the department who shall be receiving a pension on the 8th day of January, 1932, shall continue to receive such pension, subject to the provisions of section 166 governing the payment of pensions. Such pension shall be paid by the retirement system, but no other benefits shall be provided for such retired members, widows, children, or parents.

Reading § 163 in connection with §§ 165, 166, and this section, only police officers on active duty on January 8, 1932, would become members of the retirement system provided by the new charter, and previously retired officers would not. **Sunder v. Collins** (1933) 219 Cal. 430, 27 Pac. (2d) 382.

Future Members of Police Department

SECTION 168. Persons who become members of the police department after the 8th day of January, 1932, shall become members of the retirement system subject only to the following provision in addition to the provisions contained in sections 158 to 164, both inclusive, of this charter: No such member of the retirement system shall be retired, except in case of disability incapacitating him for the performance of his duties, unless he shall have attained the age of sixty-two years, and completed twenty-five years of continuous service, except that retirement shall be compulsory at the age of seventy years. It may be provided, however, under such retirement system, that members may retire after thirty years of continuous service, the benefits of retirement in such cases to be determined, because of retirement at an age below sixty-two, in accordance with the tables recommended by the actuary and approved by said retirement board.

Retirement Provisions—Police Department

SECTION 168.1. Members of the police department, as defined in section 168.1.1 who are members of the retirement system under sections 165, 166 or 168 of the charter on the first day of July, 1945 and persons who become members of said department after said date, shall be members of the retirement system under this section 168.1 on and after said date, and shall be subject to the following provisions of section 168.1, and sections 168.1.1, 168.1.2, 168.1.3, 168.1.4, 168.1.5, 168.1.6, 168.1.7, 168.1.8, 168.1.9, 168.1.10, 168.1.11, 168.1.12, 168.1.13 and 168.1.14 (which shall apply only to members under section 168.1 unless otherwise indicated) in addition to the provisions contained in sections 158 to 161, both inclusive, of this charter notwithstanding the provisions of any other section of the charter. Members of the said department who are members of the retirement system under section 166 of the charter on July 1, 1949, however, shall have the option to be exercised in writing on a form furnished by the retirement system and to be filed at the office of said system not later than ninety days after July 1, 1949, of being members of the system under section 166 instead of section 168.1, the election under said option to be effective on said date. In like manner, members of the said department who are members of the retirement system under sections 165 or 168 of the charter shall have the option, to be exercised in writing on a form furnished by the retirement system, and to be filed at the office of said system not later than ninety days after July 1, 1949, of being members of the system under sections 165 or 168, respectively, instead of section 168.1, the election to be effective on said date, provided, that members who are absent by reason of service in the armed forces of the United States or by reason of any other service included in section 161 of the charter, on the effective date of the amendment shall have the same option of electing to be members under sections 165, 166, or 168, as the case may be, instead of section 168.1, until ninety days after their return to service in the police department.

On and after July 1, 1949 the persons who affirmatively exercise said option, shall continue to be members of the system under sections 165, 166, or 168, respectively, and shall not be subject to any of the provisions of section 168.1. [*New section, 1945; amended, 1949*]

SECTION 168.1.1. The following words and phrases as used in this section, unless a different meaning is plainly required by the context shall have the following meanings:

“Retirement allowance,” “death allowance,” or “allowance” shall mean equal monthly payments, beginning to accrue upon the date of retirement, or upon the day following the date of death, as the case may be, and continuing for life unless a different term of payment is definitely provided by the context.

“Compensation,” as distinguished from benefits under the Workmen’s Compensation Insurance and Safety Act of the State of California, shall mean the remuneration payable in cash, by the city and county, without deduction except for absence from duty, for time during which the individual receiving such remuneration is a member of the police department, but excluding remuneration paid for overtime.

“Compensation earnable” shall mean the compensation which would have been earned had the member received compensation without interruption throughout the period under consideration and at the rates of remuneration attached at that time to the ranks or positions held by him during such period, it being assumed that during any absence he was in the rank or position held by him at the beginning of the absence, and that prior to becoming a member of the police department, he was in the rank or position first held by him in such department.

“Benefit” shall include “allowance,” “retirement allowance,” “death allowance” and “death benefit.”

“Final compensation” shall mean the average monthly compensation earnable by a member during the three years immediately preceding his retirement, or death before retirement.

For the purpose of the retirement system and of this section, the terms “member of the police department,” “member of the department” or “member” shall mean any officer or employee of the police department whose employment therein began prior to January 1, 1900, or whose employment therein began or shall

begin after that date, and was or shall be subject to the charter provisions governing entrance requirements for members of the uniformed force of said department, and said terms further shall mean, from the effective date of their employment in said department, persons employed on the effective date hereof regardless of age, or employed after said date at an age not greater than the maximum age then prescribed for entrance into employment in said uniformed force, to perform the duties now performed under the titles of criminologist, photographer, police patrol driver, police motor boat operator, woman protective officer, police woman or jail matron. Any police service performed by such a member of the police department outside the limits of the city and county and under orders of a superior officer of any such member, shall be considered as city and county service, and any disability or death incurred therein shall be covered under the provisions of the retirement system.

“Retirement system” or “system” shall mean San Francisco City and County Employees’ Retirement System as created in section 158 of the charter.

“Retirement board” shall mean “retirement board” as created in section 159 of the charter.

“Charter” shall mean the charter of the City and County of San Francisco.

Words used in the masculine gender shall include the feminine and neuter genders, and singular numbers shall include the plural, and the plural the singular.

“Interest” shall mean interest at the rate adopted by the retirement board. [*New section, 1949*]

SECTION 168.1.2. Any member of the police department who completes at least thirty years of service in the aggregate, regardless of age, or at least twenty-five years of service in the aggregate, and attains the age of fifty-five (55) years, said service to be computed under section 168.1.9, may retire for service at his option. Members shall be retired on the first day of the month next following the attainment by them of the age of sixty-seven years during the twelve months ending June 30, 1949; the age of sixty-six years during the twelve months ending June 30, 1950, and thereafter, following the attainment of the age of sixty-five years. A member retired after meeting the service and

age requirements in the sentence next preceding, shall receive a retirement allowance equal to fifty per cent of the final compensation of said member, as defined in Section 168.1.1, plus an allowance at the rate of one and two-thirds ($1\frac{2}{3}$) per cent of said final compensation, for each year of service rendered prior to attaining age 60 and after qualifying as to age and service for retirement. A member retired after attaining the age of 65 years, but before completing twenty-five years of service in the aggregate computed under section 168.1.9, shall receive a retirement allowance which bears the same ratio to fifty per cent of the final compensation of said member, as defined in section 168.1.1 as the service with which he is entitled to be credited, bears to twenty-five years. Any member may retire, regardless of age, after rendering twenty-five years of service in the aggregate, computed under section 168.1.9, but in such event, his retirement allowance shall be such as can be provided at the age of retirement, by the actuarial value, at the age of retirement, of the retirement allowance to which he would be entitled at the date upon which he would qualify for retirement under the first sentence of this paragraph, deferred to that date. If, at the date of retirement for service, or retirement for disability resulting from an injury received in performance of duty, said member has no wife, children or dependent parents, who would qualify for the continuance of the allowance after the death of said member, or with respect to the portion of the allowance which would not be continued regardless of dependents, or upon retirement for disability resulting from other causes, with respect to all of the allowance and regardless of dependents at retirement, a member retired under this section, or section 168.1.3, may elect before the first payment of the retirement allowance is made, to receive the actuarial equivalent of his allowance or the portion which would not be continued regardless of dependents, as the case may be, partly in a lesser allowance to be received by him throughout his life, and partly in other benefits payable after his death to another person or persons, provided that such election shall be subject to all the conditions prescribed by the board of supervisors to govern similar election by other members of the retirement system, including the character and amount of such other benefits. [New section, 1949; amended, 1952]

SECTION 168.1.3. Any member of the police department who

§ 168.1.3-168.1.4

becomes incapacitated for the performance of his duty, by reason of bodily injury received in, or illness caused by performance of his duty, shall be retired, and if he is not qualified for service retirement, shall receive a retirement allowance, equal to seventy-five per cent of the final compensation of said member, as defined in section 168.1.1. Said allowance shall be paid to him until the date upon which said member would have qualified for service retirement had he lived and rendered service without interruption in the rank held by him at retirement, and after said date the allowance payable shall be equal to the retirement allowance said member would have received if retired for service on said date, based on the average monthly compensation he would have received during the three years immediately prior to said date, had he lived and rendered service as assumed, but such allowance shall not be less than one-half of such average monthly compensation. If at the time of retirement because of disability, he is qualified as to age and service for retirement under section 168.1.2, he shall receive an allowance equal to the retirement allowance which he would receive if retired under section 168.1.2, but not less than fifty per cent of said final compensation. Any member of the police department who becomes incapacitated for the performance of his duty, by reason of a cause not included under the provisions of the immediately preceding sentences, and who shall have completed at least ten years of service in the aggregate, computed as provided in section 168.1.9, shall be retired upon an allowance of one and one-half per cent of the final compensation of said member, as defined in section 168.1.1, for each year of service, provided that said allowance shall not be less than thirty-three and one-third per cent of said final compensation. The question of retiring a member under this section may be brought before the retirement board on said board's own motion, by recommendation of the police commission, or by said member or his guardian. If his disability shall cease, his retirement allowance shall cease, and he shall be restored to the service in the rank he occupied at the time of his retirement. *[New section, 1949]*

SECTION 168.1.4. If a member of the police department shall die before or after retirement by reason of an injury received in, or illness caused by the performance of his duty, a death

allowance, in lieu of any allowance payable under any other section of the charter or by ordinance, on account of death resulting from injury received in or illness caused by the performance of duty, shall be paid, beginning on the date next following the date of death, to his surviving wife, throughout her life or until her remarriage. If the member, at the time of death, was qualified for service retirement, but had not retired, the allowance payable shall be equal to the retirement allowance which the member would have received if he had been retired for service on the day of death, but such allowance shall not be less than one-half of the average monthly compensation earnable by said member during the three years immediately preceding death. If death occurs prior to qualification for service retirement the allowance payable shall be equal to the compensation of said member at the date of death, until the date upon which said member would have qualified for service retirement, had he lived and rendered service without interruption in the rank held by him at death, and after said date the allowance payable shall be equal to the retirement allowance said member would have received if retired for service on said date, based on the average monthly compensation he would have received during the three years immediately prior to said date, had he lived and rendered service as assumed, but such allowance shall not be less than one-half of such average monthly compensation. If he had retired prior to death for service or for disability resulting from injury received in, or illness caused by the performance of duty, the allowance payable shall be equal to the retirement allowance of the member, except that if he was a member under section 168.1 and retirement was for such disability, and if death occurred prior to qualification for the service retirement allowance, the allowance continued shall be reduced upon the date at which said member would have qualified for service retirement, in the same manner as it would have been reduced had the member not died. If there be no surviving wife entitled to an allowance hereunder, or if she die or remarry before every child of such deceased member attains the age of eighteen years, then the allowance which the surviving wife would have received had she lived and not remarried shall be paid to his child or children under said age, collectively, to continue until every such child dies or attains said age, provided that no child shall receive any

§ 168.1.4-168.1.5

allowance after marrying or attaining the age of eighteen years. Should said member leave no surviving wife and no children under the age of eighteen years, but leave a parent or parents dependent upon him for support, the parents so dependent shall collectively receive a monthly allowance equal to that which a surviving widow otherwise would have received, during such dependency. No allowance, however, shall be paid under this section to a surviving wife following the death of a member unless she was married to the member prior to the date of the injury or onset of the illness which results in death. [*New section, 1949*]

SECTION 168.1.5. Upon the death of a member after qualification for service retirement under sections 166, 168 or 168.1.2, or after retirement for service or because of disability which resulted from injury received in, or illness caused by the performance of duty, and if death shall result from other cause than such injury or illness, one-half of his retirement allowance to which he would have been entitled if he had retired for service at the time of his death or one-half his retirement allowance as it was at his death, as the case may be, shall be continued throughout life or until remarriage, to his surviving wife, except that if he was a member under section 168.1 and retirement was for such disability, and if death occurred prior to qualification for the service retirement allowance, the allowance continued shall be reduced upon the date at which said member would have qualified for service retirement, in the same manner as it would have been reduced had the member not died. If there be no surviving wife entitled to an allowance hereunder, or if she die or remarry before every child of such deceased member attains the age of eighteen years, then the allowance which the surviving wife would have received had she lived and not remarried shall be paid to his child or children under said age, collectively, to continue until every such child dies or attains said age, provided that no child shall receive any allowance after marrying or attaining the age of eighteen years. Should said member leave no surviving wife and no children under the age of eighteen years, but leave a parent or parents dependent upon him for support, the parents so dependent shall collectively receive a monthly allowance equal to that which a surviving wife otherwise would have received, during such dependency. No allowance, however, shall be paid under this section to a surviving wife unless she

was married to the member prior to the date of the injury or onset of the illness which results in death, prior to retirement, or unless she was married to the member at least one year prior to his retirement. The surviving wife, in the event of death of the member after qualification for but before service retirement, may elect before the first payment of the allowance, to receive the benefit provided in section 168.1.7 in lieu of the allowance which otherwise would be continued to her under this section. If there be no surviving wife, the guardian of the child or children under age of eighteen, may make such election, and if there be no such children, the dependent parent or parents may make such election. Persons heretofore or hereafter retired under other charter sections, as members of the police department at the time of retirement, shall be subject to the provisions of this section. With respect to members under section 168.1, "Qualified for service retirement," "Qualification for service retirement" or "Qualified as to age and service for retirement," as used in this section and other sections to which persons who are members under section 168.1 are subject, shall mean completion of thirty years of service regardless of age, or twenty-five years of service and attainment of age fifty-five, said service to be computed under section 168.1.9. [*New section, 1949; amended, 1952*]

On appeal from a judgment supporting the Retirement Board's determination that the widow of a member who had retired and was found to have a service-connected disability was entitled to a pension under this section rather than section 168.3, it was appellant's burden to show that the evidence and the reasonable inferences therefrom did not support the findings of the Board. On such appeal, respondent enjoys in its favor all inferences arising from conflicts in the evidence, even though an equally reasonable adverse inference is possible. Appellant, in other words, must not only show that a finding in her favor would have been supported, but must demonstrate that such finding is compelled as a matter of law. **Cooper v. Retirement Board of San Francisco** (1955) 131 Cal. App. (2d) 804, 281 Pac. (2d) 349.

In proceedings to compel payment of a widow's pension under section 168.3, rather than under this section, for death of a retired member, the findings of the Retirement Board that the member did not die of injury received in, or illness caused by the performance of his duty and that the widow did not sustain her burden of proving that the member died as result of injury received in or illness caused by performance of his duty, were sustained by the evidence where the member, a policeman who suffered a service-connected heart condition had attempted, after his retirement, to make an arrest, whereupon he was assaulted, and the medical testimony showed at most that in the legal sense the cause of his death was the over-exertion or excitement caused by the altercation. **Cooper v. Retirement Board of San Francisco** (1955) 131 Cal. App. (2d) 804, 281 Pac. (2d) 349.

§ 168.1.5.1

SECTION 168.1.5.1. Every allowance based on the average monthly compensation earnable by the member during the three or ten years prior to retirement or death, and payable for time commencing on the effective date of this section, to or on account of persons who were retired or who died prior to January 1, 1951, as members of the police department, shall be adjusted to the amount it would be if it had been based on the monthly compensation fixed in section 35.5 of the charter as of July 1, 1951, for the rank of police officer in the respective years of service, regardless of the rank or position the member held in the department prior to his retirement, or death before retirement. Every service retirement allowance under section 168, which is included in the sentence next preceding, shall be adjusted to what it would have been, if prior to optional modification, the allowance had been fifty percent of said monthly compensation. Allowances payable under sections 168.1.3, 168.1.4, or 168.3 to or on account of persons who were retired for disability or died prior to January 1, 1951, on and after the date such persons would have qualified for service retirement, shall be calculated as provided in said sections 168.1.3; 168.1.4, or 168.3, respectively. The provisions of section 168.1.5 with respect to continuance of one-half of retirement allowance upon deaths after retirement, shall be applied from the effective date of this section as if they were effective on November 2, 1948. This section does not authorize any decrease in any allowance from the amount being paid at said effective date, nor does this section give any retired member, or any beneficiary of such member, or his successors in interest, any claim against the city and county for any increase in any allowance paid or payable for the time prior to its effective date. Adjustment in reserves under allowances which are changed according to this section, shall be made on the basis of current interest rate and mortality tables.

The increase in the retirement allowance shall be apportioned according to service rendered by the member in the same manner that the allowance prior to increase was apportioned. Contributions to the retirement system, necessary for the payment of the increase of the portion of the retirement allowances which is paid from reserves held by the retirement system, shall be provided from the reserves held by the retirement system on account of members under section 168.1, the necessary amount

being transferred upon said effective date, from said reserves to the reserves held by the retirement system to meet the obligations on account of benefits that have been granted and on account of prior service of members. The contribution being required of the city and county currently, as a percentage of salaries of persons who are members under section 168.1, shall be increased to a percentage determined by the actuary as necessary to replace the reserves so transferred. Contributions to the retirement system necessary for the payment of said increases with reference to current and prior service portions of the allowances which are not paid from reserves held by the retirement system, shall be paid to the system by the city and county by annual appropriations, provided that such appropriation for any year shall not be less than the amount disbursed during that year on account of said increases. [*New section, 1952*]

SECTION 168.1.5.2. Every retirement or death allowance payable for time commencing on the effective date of this section, hereby designated as the first day of the month next following its ratification by the legislature, to or on account of any person who died or was retired prior to November 8, 1955, as a member of the police department, unless such person was retired or died as a member of the retirement system or the former police relief and pension fund, under any section of the charter, other than section 168, or 168.1, is hereby increased by the amount of \$25.00 per month; provided, however, that such increased retirement allowance or death allowance shall not exceed 50% of the compensation as of July 1, 1954, attached to the rank of police officer in the fourth year of service as set forth under section 35.5 of the charter, regardless of the rank or position the member held in the department prior to his retirement or death before retirement.

Such increase shall not be modified under, nor subject to, option 2 or 3 provided by ordinance. Allowances payable under section 168.1.3, 168.1.4, or 168.3, to or on account of persons who were retired for disability or died prior to November 8, 1955, on and after the date such persons would have qualified for service retirement, shall be calculated as provided in said sections 168.1.3, 168.1.4, or 168.3, respectively.

This section does not authorize any decrease in any allowance from the amount being paid at said effective date, nor does this

§ 168.1.5.2-168.1.6

section give any member who retired, or the beneficiary of any member who died prior to the effective date hereof, or his successors in interest, any claim against the city and county for any increase in retirement allowance paid or payable for time prior to said effective date.

The increase in allowance shall be apportioned between service rendered prior to the entry of the member into the retirement system under section 168 or 168.1, and service rendered as such a member, in the same proportion that such prior and current service respectively, bears to the total service credited at retirement. Contributions to the retirement system necessary for the increases in the allowances provided in this section, shall be provided, with respect to the portion of the benefit based on service rendered as members under section 168 and 168.1 from the reserves held by the retirement system on account of members of the retirement system under section 168.1, the necessary amount being transferred upon said effective date, from said reserves to the reserves held by the retirement system to meet the obligations on account of allowances which are increased by this section 168.1.5.2. The contribution being required of the city and county currently, as percentages of salaries of persons who are members under section 168.1, shall be increased to percentages determined by the actuary as necessary to replace the reserves so transferred. Contributions to the retirement system necessary for the payment of said increases with reference to service, not rendered as members under section 168 or 168.1, shall be paid to the system by the city and county by annual appropriations, provided that such appropriation for any year shall not be less than the amount disbursed during that year on account of said increases. [*New section, 1956*]

SECTION 168.1.6. That portion of any allowance payable because of the death or retirement of any member of said department, which is provided by contributions of the city and county, shall be reduced in the manner fixed by the board of supervisors, by the amount of any benefits, other than medical benefits, payable to or on account of such person, under the Workmen's Compensation Insurance and Safety Law of the State of California and because of the injury or illness resulting in said death or retirement. Such portion which is paid because of death or retire-

ment which resulted from injury received in or illness caused by performance of duty, shall be considered as in lieu of any benefits, other than medical benefits, payable to or on account of such persons under the said law of the State of California, and shall be in satisfaction and discharge of the obligation of the city and county to pay such benefits. [*New section, 1949*]

SECTION 168.1.7. If a member of the police department shall die, before retirement, from causes other than an injury received in, or illness caused by the performance of duty, or regardless of cause, if no allowance shall be payable under section 168.1.4 or 168.1.5 preceding, a death benefit shall be paid to his estate or designated beneficiary, the amount of which and the conditions for the payment of which shall be determined in the manner prescribed by the board of supervisors for the death benefit of other members of the retirement system. Upon the death of a member after retirement and regardless of the cause of death, the sum of five hundred dollars shall be paid to his estate or designated beneficiary in the manner and subject to the conditions prescribed by the board of supervisors for the payment of a similar benefit upon the death of other retired members. [*New section, 1949; amended, 1952*]

SECTION 168.1.8. Should any member of the department cease to be employed as such a member, through any cause other than death or retirement or transfer to another office or department, all of his contributions, with interest credited thereon, shall be refunded to him subject to the conditions prescribed by the board of supervisors to govern similar terminations of employment of other members of the retirement system. If he shall again become a member of the department, he shall redeposit in the retirement fund the amount refunded to him. Contributions with interest, which are credited because of service rendered in any other office or department and which will not be counted under section 168.1.9, to any person who becomes a member of the retirement system under this section, shall be refunded to him forthwith. Should a member of the police department become an employee of any other office or department, his accumulated contribution account shall be adjusted by payments to or from him as the case may be, to make the accumulated contributions credited to him at the time of change, equal to the amount which would have been

§ 168.1.8-168.1.9

credited to him if he had been employed in said other office or department at the rate of compensation received by him in the police department, and he shall receive credit for service for which said contributions were made, according to the charter section under which his membership in the retirement system continues. [*New section, 1949*]

SECTION 168.1.9. The following time shall be included in the computation of the service to be credited to the member for the purposes of determining whether such member qualifies for retirement, and calculating benefits, excluding, however, any time the contributions for which were withdrawn by said member upon termination of his service while he was a member under any other charter section, and not redeposited upon re-entry into service:

(1) Time during and for which said member is entitled to receive compensation because of services as a member of the fire or police department.

(2) Time during which said member served and received compensation as a jail matron in the office of the sheriff.

(3) Time during which said member is entitled to receive compensation while a member of the retirement system, because of service rendered in other offices and departments before July 1, 1949, provided that accumulated contributions on account of such service, previously refunded, are redeposited, with interest from date of refund to date of redeposit, at times and in the manner fixed by the retirement board; and solely for the purpose of determining qualification for retirement under section 168.1.3 for disability not resulting from injury received in, or illness caused by performance of duty, time during which said member serves, after June 30, 1949, and receives compensation because of services rendered in other offices and departments.

(4) Time during which said member is absent from a status included in paragraphs (1), (2) or (3) next preceding, by reason of service in the armed forces of the United States of America, or by reason of any other service included in section 161 of the charter, during any war in which the United States was or shall be engaged or during other national emergency, and for which said member contributed or contributes to the retirement system or for which the city and county contributed or contributes on his account. [*New section, 1949*]

SECTION 168.1.10. All payments provided for persons who are members under section 168.1 shall be made from funds derived from the following sources, plus interest earned on said funds:

(1) The normal rate of contribution of each member shall be based on his age taken to the next lower complete quarter year, (a) at the date he became a member under sections 165 or 168, in the case of persons who are members under these sections, or (b) at July 1, 1945, in the case of persons who are members under section 166, and his age taken to the next lower completed quarter year, when he entered the police department, or (c) on his age at the date he becomes a member under section 168.1, in the case of persons who become members on or after July 1, 1945, without credit for services counted under section 168.1.9. The age of entrance into the police department shall be determined by deducting the member's service credited under section 168.1.9 as rendered prior to the date upon which his age is based for determination of the rate of contribution according to the sentence next preceding, from said age. The normal rate of contribution of each such member, to be effective from the effective date of membership under section 168.1, shall be such as, on the average for such member, will provide, assuming service without interruption, under section 168.1.2, one-third of that portion of the service retirement allowance to which he would be entitled, without continuance to dependents, upon first qualifying as to age and service, for retirement under that section, without discount of allowance, which is based on service rendered after the date upon which his age is based for determination of his rate of contribution according to the first sentence in this paragraph, and assuming the contribution to be made from that date. The normal rate of contribution, however, shall not exceed ten per cent.

§ 168.1.10

(2) The dependent rate of contribution of each member which shall be required of each member throughout his membership in addition to the normal contributions, and in the same manner as normal contributions, shall be such as, on the average for such member, will provide, assuming service without interruption under section 168.1.2, and upon his first qualifying as to age and service for retirement under that section, one-third of the portion of his allowance, which is to be continued under section 168.1.5, after his death and throughout the life of a surviving wife whose age at said death is three years less than the age of said member. If at the date of retirement for service or retirement for disability resulting from injury received in performance of duty, said member has no wife who would qualify for the continuance of the allowance to her after the death of said member, or upon retirement from disability resulting from other causes, regardless of his marital condition, the dependent contributions with accumulated interest thereon, shall be paid to him forthwith. The dependent rate of contribution, however, shall not exceed the difference between ten per cent and the member's normal rate of contribution, and said dependent rate may be taken as a flat percentage of the member's normal rate, regardless of the age of qualification for service retirement.

(3) There shall be deducted from each payment of compensation made to a member under section 168.1, a sum determined by applying the member's rates of contribution to such compensation payment. The sum so deducted shall be paid forthwith to the retirement system. Said contribution shall be credited to the individual account of the member from whose salary it was deducted, and the total of said contributions, together with interest credited thereon in the same manner as is prescribed by the board of supervisors for crediting interest to contributions of other members of the retirement system, shall be applied to provide part of the retirement allowance granted to, or allowance granted on account of said member, under this section or shall be paid to said member or his estate or beneficiary as provided in sections 168.1.7, 168.1.8, and 168.1.9.

(4) Contributions based on time included in paragraphs (1), (2), (3) and (4) of section 168.1.9, and deducted prior to July 1, 1945, from compensation of persons who become members under section 168.1, and standing with interest thereon, to the credit of

such members on the records of the retirement system on said date, shall continue to be credited to the individual accounts of said members and shall be combined with and administered in the same manner as the contributions deducted after said date.

(5) The total contributions, with interest thereon, made by or charged against the city and county and standing to its credit, in the accounts of the retirement system, on account of persons who become members under this section, shall be applied to provide the benefits under this section.

(6) The city and county shall contribute to the retirement system such amounts as may be necessary, when added to the contributions referred to in the preceding paragraphs of this section 168.1.10, to provide the benefits payable under this section. Such contributions of the city and county to provide the portion of the benefits hereunder which shall be based on service rendered by each member prior to the date upon which his age is based for determination of his rate of contribution in paragraph (1), section 168.1.10, shall not be less during any fiscal year than the amount of such benefits paid during said year. Such contributions of the city and county to provide the portion of the benefits hereunder which shall be based on service rendered by respective members on and after the date stated in the next preceding sentence, shall be made in annual installments, and the installment to be paid in any year shall be determined by the application of a percentage to the total compensation paid during said year, to persons who are members under section 168.1, said percentage to be the ratio of the value on July 1, 1945, or at the later date of a periodical actuarial valuation and investigation into the experience under the system as provided by the board of supervisors, of the benefits thereafter to be paid under this section, from contributions of the city and county, less the amount of such contributions, and plus accumulated interest thereon, then held by said system to provide said benefits on account of service rendered by respective members after the date stated in the sentence next preceding, to the value at said respective dates of salaries thereafter payable to said members. Said values shall be determined by the actuary, who shall take into account the interest which shall be earned on said contributions, the compensation experience of members, and the probabilities of separation by all causes, of members from service before retirement and of death after retire-

ment. Said percentage shall be changed only on the basis of said periodical actuarial valuation and investigation into the experience under the system.

(7) To promote the stability of the retirement system through a joint participation in the result of variations in the experience under mortality, investment and other contingencies, the contributions of both members and the city and county held by the system to provide the benefits under this section, shall be a part of the fund in which all other assets of said system are included. Nothing in this section shall affect the obligation of the city and county to pay to the retirement system any amounts which may or shall become due under the provisions of the charter prior to the effective date hereof, and which are represented on said effective date, in the accounts of said system by debits against the city and county. [*New section, 1949*]

SECTION 168.1.11. Upon the completion of the years of service set forth in section 168.1.2 as requisite to retirement, a member shall be entitled to retire at any time thereafter in accordance with the provisions of said section 168.1.2, and nothing shall deprive said member of said right. [*New section, 1949*]

SECTION 168.1.12. No person retired as a member under section 168.1 after June 30, 1945, for service or disability and entitled to receive a retirement allowance under the retirement system shall serve in any elective or appointive position in the city and county service, including membership on boards and commissions, nor shall such person receive any payment for service rendered to the city and county after retirement, provided that service as an election officer or juror shall not be affected by this section.

Notwithstanding any provision in this charter to the contrary, should any such retired person, except persons retired prior to July 1, 1949, because of disability which resulted from injury received in, or illness caused by the performance of duty, engage in a gainful occupation prior to attaining the age of sixty, the retirement board shall reduce that part of his monthly retirement allowance which is provided by contributions of the city and county, to an amount which, when added to the amount earned monthly by him in such occupation, shall not exceed the amount

of the compensation earnable at the time he engages in the gainful occupation, by the member if he then held the position which he held at the time of his retirement, or, if that position has been abolished, the compensation earnable by the member if he held the position from which he was retired, immediately prior to its abolition.

The effective date of this amendment shall be the first day of the month following ratification by the State Legislature. [*New section, 1949; amended, 1949*]

SECTION 168.1.13. Any section or part of any section in this charter, insofar as it should conflict with these sections 168.1, 168.1.1, 168.1.2, 168.1.3, 168.1.4, 168.1.5, 168.1.6, 168.1.7, 168.1.8, 168.1.9, 168.1.10, 168.1.11, 168.1.12, 168.1.13 or 168.1.14, or with any part thereof, shall be superseded by the contents of said sections. In the event that any word, phrase, clause or section of these sections shall be adjudged unconstitutional, the remainder thereof shall remain in full force and effect. [*New section, 1949*]

SECTION 168.1.14. The amendment of section 168.1, and sections 168.1.1, 168.1.2, 168.1.3, 168.1.4, 168.1.5, 168.1.6, 168.1.7, 168.1.8, 168.1.9, 168.1.10, 168.1.11, 168.1.12, 168.1.13, and 168.1.14, contained in the proposition therefor submitted to the electorate on November 2, 1948, shall take effect on the first day of July, 1949. [*New section, 1949*]

SECTION 168.1.15. *No section for this number.*

SECTION 168.1.16. Added new section 168.1.5.1, and amended sections 168.1.2, 168.1.5 and 168.1.7, contained in the propositions therefor submitted to the electorate on November 6, 1951, shall take effect on the first day of the month next following their ratification by the State Legislature. [*New section, 1952*]

SECTION 168.1.17. Any section or part of any section in this charter, insofar as it should conflict with new section 168.1.5.1, or amended sections 168.1.2, 168.1.5, and 168.1.7, or with any part thereof, shall be superseded by the contents of said sections. In the event that any word, phrase, clause, or section of these sections, shall be adjudged unconstitutional, the remainder thereof shall remain in full force and effect. [*New section, 1952*]

SECTION 168.2. *No section for this number.*

**Pension Provisions—Dependents of Members of Fire and
Police Departments Killed in Line of Duty**

SECTION 168.3. If a member of the fire or police departments, as defined in the charter for the purposes of the retirement system, or a member of the salvage corps in the fire department, or any person employed by the city and county to perform duties now performed under the titles of pilot of fireboats, marine engineer of fireboats, or marine fireman of fireboats, all of whom are hereinafter designated as members, shall die before or after retirement as a result of an injury received in, or illness caused by the performance of his duty, a monthly allowance, in lieu of any allowance payable under any other section of the charter or by ordinance, shall be paid, beginning on the date next following the date of death, to his surviving wife throughout her life or until her remarriage. If the member, at the time of death, was qualified for service retirement, but had not retired, the allowance payable shall be equal to the retirement allowance which the member would have received if he had been retired for service on the day of death, but such allowances shall not be less than one-half of the average monthly compensation earnable by said member during the three years immediately preceding death, and if he had retired prior to death, the allowance payable shall be equal to the retirement allowance of the member. If death occurs prior to qualification for service retirement, the allowance payable shall be equal to the compensation of said member at the date of death, until the date upon which said member would have qualified for service retirement, had he lived and rendered service without interruption in the rank held by him at death, and after said date the allowance payable shall be equal to the retirement allowance said member would have received if retired for service on said date, based on the average monthly compensation he would have received during the three years immediately prior to said date, had he lived and rendered service as assumed, but such allowance shall not be less than one-half of such average monthly compensation. If there be no surviving wife entitled to an allowance hereunder, or if she die or remarry before every child of such deceased member attains the age of eighteen years, then the allowance which the surviving wife would have received had she lived and not remarried shall be paid to his child or children under said age, collectively, to continue until every such child dies or attains

said age, provided that no child shall receive any allowance after marrying or attaining the age of eighteen years. Should said member leave no surviving wife and no children under the age of eighteen years, but leave a parent or parents dependent upon him for support, the parents so dependent shall collectively receive a monthly allowance equal to that which a surviving widow otherwise would have received, during such dependency. No allowance, however, shall be paid under this subsection to a surviving wife following the death of a member unless she was married to the member prior to the date of the injury or onset of the illness which results in death.

Benefits provided under this section shall be in lieu of all benefits payable under other sections of the charter upon death of such member resulting from an injury received in, or illness caused by the performance of duty, except the five hundred dollar benefit payable upon death after retirement.

Contributions to provide the allowance under this section shall be made to the San Francisco City and County Employees' Retirement System by the city and county. The amount of the contribution shall be determined and payment to the system shall be made in the same manner as contributions are determined and paid which are required for other benefits provided under the retirement system for the respective groups of members who are included under this section.

Notwithstanding any other provisions of this charter, any member of the salvage corps in the fire department, or any person employed by the city and county to perform duties now performed under the titles of pilot of fire boats, marine engineer of fire boats, or marine firemen of fire boats, who becomes incapacitated for performance of his duty by reason of any bodily injury received in or illness caused by the performance of his duty, shall receive the same benefits as members of the fire department who are members of the retirement system under section 171 of the charter. [*New section, 1947*]

Present Members of Fire Department

SECTION 169. Persons who are members of the fire department on the 8th day of January, 1932, shall become members of the retirement system on that date, subject only to the following

provisions, in addition to the provisions contained in sections 158 to 163, both inclusive, of this charter:

(a) Any member of the fire department who shall have completed twenty-five years of continuous service as a member of the fire department next preceding the date of his retirement, or any member of the fire department who shall have reached the age of fifty-five years and shall have completed twenty years of continuous service as a member of the fire department next preceding the date of his retirement, may retire from service at his option. Any member of the fire department who shall become physically disabled by reason of any bodily injury received in the performance of his duty may be retired from service on satisfactory proof thereof. The retirement board, by unanimous vote, may retire from service any aged, disabled or infirm member of the fire department who has arrived at the age of sixty years and who has completed twenty years of continuous service as a member of the department next preceding such age, who may be ascertained to be, by reason of such age, infirmity or other disability, unfit for the performance of his duties. Such retired member shall receive a monthly pension, payable throughout his life, equal to one-half the amount of the salary attached to the rank held by him three years prior to the date of his retirement hereinafter referred to as "pension" in this and the following sections; provided that where such retirement is based on disability alone, in case the disability of such member shall cease, his pension shall cease, and he shall be restored to service in the rank he occupied at the time of his retirement. Should any said retired member die leaving a widow, who shall have been married to the decedent at least one year prior to the date of his retirement, such widow shall, as long as she may live and remain unmarried, be paid said pension; provided further, that should said widow die leaving a child or children under the age of sixteen years, said pension shall continue to be paid such child or such children collectively until the youngest child arrives at the age of sixteen years; and provided, further, that should said retired member die leaving no widow but leaving an orphan child or children under the age of sixteen years, such child or children collectively shall receive said pension until the youngest child attains the age of sixteen years.

(b) The family of any member of the fire department who

shall die as a result of any injury received during the performance of his duty, or from sickness clearly, unmistakably and directly caused by and resulting from the discharge of such duty, or while eligible to a pension on account of years of service in the department, or who has served twenty consecutive years in the department and attained the age of fifty-five years, shall receive the following benefits:

First, should the decedent leave a widow to whom he was married prior to the date of the injury resulting in death, his widow shall, as long as she may live and remain unmarried, be paid a monthly pension equal to one-half of the salary attached to the rank held by the decedent at the time of his said injury, provided, however, that should said widow die, leaving a child or children under the age of sixteen years, said pension shall continue to such child or children collectively until the youngest child arrives at the age of sixteen years.

Second, should the decedent leave no widow, but leave an orphan child or children under the age of sixteen years, such child or such children collectively shall receive said pension until the youngest child attains the age of sixteen years.

Third, should the decedent leave no widow and no orphan child or children, but leave a parent or parents dependent solely upon him for support, such parents so depending shall collectively receive said pension during such time as the retirement board may unanimously determine its necessity.

(c) When any member of the department shall die from natural causes and before retirement, and when no pension is payable to his widow or children, there shall be paid to his estate or beneficiary a death benefit, the amount of which and the conditions for the payment of which shall be determined in the manner prescribed by the board of supervisors for the death benefit of other members of the retirement system.

(d) In addition to the other contributions required of the city and county under the retirement system, the city and county shall contribute to the retirement system during each fiscal year a sum which shall be equal to the liabilities accruing under the retirement system because of service rendered during such year by persons becoming members on the 8th day of January, 1932, under this section. If, subsequent to such fiscal year, it shall be

determined that such contribution by the city and county was not sufficient to meet such liability, then the city and county shall make such additional contribution as may be necessary to make up the deficit.

(e) No benefits shall be provided under the retirement system for, nor shall any contributions be required of, persons who become members of the retirement system under this section, in addition to the benefits specifically provided and contributions specifically required in such section. Any pension payable because of the death or retirement of any of such persons shall be reduced in the manner fixed by the board of supervisors, by the amount of any benefits payable to or on account of such person, under the workmen's compensation insurance and safety law of the State of California.

(f) Persons who are members of the fire department on the 8th day of January, 1932, shall have the option, to be exercised in writing on or before the 1st day of July, 1932, of becoming members of the retirement system under the provisions of section 171, which applies to persons who become members of the department after the 8th day of January, 1932. If such persons shall affirmatively exercise such option within the time specified, then they shall not receive any benefit under this section, but shall become members of the retirement system and shall receive benefits and make contributions on the same basis as persons who become members of the department after the 8th day of January, 1932, provided that a pension for each person affirmatively exercising such option shall be payable on account of service rendered to the city and county prior to the 8th day of January, 1932, by contributions of the city and county, which pension shall be the same percentage, regardless of the age of retirement, of his final compensation, as defined by the board of supervisors, for each year of such service, as the contributions of the member and the city and county are calculated to provide upon retirement at age fifty-five for each year of service rendered as a member of the retirement system.

The provision of this section that "should decedent leave a widow to whom he was married prior to the date of the injury" this widow would receive a pension, and of § 170 relating to the rights of present retired members and present beneficiaries, alone would disqualify the widow of a member who was injured and retired in 1914, who married this woman in 1923, prior to the 1925 and 1929 amendments under which

she claimed, and who died in 1935. **Jordan v. Retirement Board** (1939) 35 Cal. App. (2d) 653, 96 Pac. (2d) 973.

The pension rights of one who was retired under this section by reason of disability as a lieutenant in the department after the present charter went into effect are governed by the provisions of such charter even though the old charter was in effect at the time he was employed as captain in the department. **Carr v. Fire Commission** (1938) 30 Cal. App. (2d) 208, 85 Pac. (2d) 959.

Cited in **Dornell v. Retirement Board** (1945) 72 Cal. App. (2d) 197, 164 Pac. (2d) 266; **Brant v. Retirement Board** (1943) 57 Cal. App. (2d) 721, 135 Pac. (2d) 396.

Present Retired Members and Present Beneficiaries, Fire Department

SECTION 170. Any member of the fire department who shall have been retired on or after January 21, 1925, or prior to January 1, 1900, and shall be receiving a pension on the 8th day of January, 1932, and any widow, child, children or parents of a deceased member of the department who shall be receiving a pension on the 8th day of January, 1932, shall continue to receive such pension subject to the provisions of section 169 governing the payment of pensions to retired members, widows, children and parents. Any member of the fire department who shall have been retired on or after the 1st day of January, 1900, and prior to the 21st day of January, 1925, and shall be receiving a pension on the 8th day of January, 1932, shall continue to receive such pension throughout his life, subject to the provisions of section 169 governing the payment of pensions granted because of disability incurred in the performance of duty, including the payment of such pension to widows, children and parents of deceased members who had been retired because of such disability. Such pensions shall be paid by the retirement system, but no other benefits shall be provided for such retired members, widows, children, or parents.

The supervisors shall appropriate to the retirement system not to exceed the sum of five thousand dollars (\$5,000) a year for the relief of aged, indigent and infirm exempt firemen who served in the Volunteer Fire Department between the years 1850 and 1866.

The provision of § 169 that "should decedent leave a widow to whom he was married prior to the date of the injury," this widow would receive a pension, and of this section relating to the rights of present retired members and present beneficiaries, alone would disqualify the widow of a member who was injured and retired in 1914, who married this woman in 1923, prior to the 1925 and 1929 amendments under which she claimed, and who died in 1935. **Jordan v. Retirement Board** (1939) 35 Cal. App. (2d) 653, 96 Pac. (2d) 973.

Future Members of Fire Department

SECTION 171. Persons who become members of the fire department after the 8th day of January, 1932, shall become members of the retirement system subject only to the following provision in addition to the provisions contained in sections 158 to 164, both inclusive, of this charter. No member of the retirement system shall be retired, except in case of disability incapacitating him for the performance of his duties, unless he shall have attained the age of fifty-five years and completed twenty years of continuous service, except that retirement shall be compulsory at the age of seventy years. It may be provided, however, under such retirement system, that members may retire after thirty years of continuous service; the benefits at retirement in such cases to be determined, because of retirement at an age below fifty-five, in accordance with the tables recommended by the actuary and approved by said retirement board.

SECTION 171.1. Members of fire department, as defined in section 171.1.1, who are members of the retirement system under sections 165, 165.2, or 171 of the charter on the effective date hereof, hereby designated as the first day of July, 1949, and persons who become members of said department after said effective date, shall be members of the retirement system under this section 171.1 on and after said date, and shall be subject to the following provisions of section 171.1 and sections 171.1.1, 171.1.2, 171.1.3, 171.1.4, 171.1.5, 171.1.6, 171.1.7, 171.1.8, 171.1.9, 171.1.10, 171.1.11, 171.1.12, 171.1.13, 171.1.14 (which shall apply only to members under section 171.1 unless otherwise indicated) in addition to the provisions contained in sections 158 to 161, both inclusive, of this charter notwithstanding the provisions of any other section of the charter. Members of the said department who are members of the retirement system under sections 165 or 165.2 of the charter, on July 1, 1950, however, shall have the option to be exercised in writing, on a form furnished by the retirement system and to be filed at the office of said system not later than ninety days after said date, of being members of the system under sections 165 or 165.2 instead of section 171.1, the election under said option to be effective on said date, provided, that members who are absent by reason of service in the armed forces of the United States or by reason of any other service included in section 161 of the

charter, on the said effective date of the amendment shall have the same option of electing to be members under sections 165 or 165.2, as the case may be, instead of section 171.1, until ninety days after their return to service in the fire department. On and after said date the persons who affirmatively exercise said option, shall continue to be members of the system under sections 165 or 165.2, respectively, and shall not be subject to any of the provisions of section 171.1. [*New section, 1949; amended, 1949*]

SECTION 171.1.1. The following words and phrases as used in this section, unless a different meaning is plainly required by the context, shall have the following meaning:

“Retirement allowance,” “death allowance” or “allowance,” shall mean equal monthly payments, beginning to accrue upon the date of retirement, or upon the day following the date of death, as the case may be, and continuing for life unless a different term of payment is definitely provided by the context.

“Compensation,” as distinguished from benefits under the Workmen’s Compensation Insurance and Safety Act of the State of California, shall mean the remuneration payable in cash, by the city and county, without deduction except for absence from duty, for time during which the individual receiving such remuneration is a member of the fire department, but excluding remuneration paid for overtime.

“Compensation earnable” shall mean the compensation which would have been earned had the member received compensation without interruption throughout the period under consideration and at the rates of remuneration attached at that time to the ranks or positions held by him during such period, it being assumed that during any absence he was in the rank or position held by him at the beginning of the absence, and that prior to becoming a member of the fire department he was in the rank or position first held by him in such department.

“Benefit” shall include “allowance,” “retirement allowance,” “death allowance” and “death benefit.”

“Final compensation” shall mean the average monthly compensation earnable by a member during the three years immediately preceding his retirement, or death before retirement.

For the purpose of the retirement system and of this section,

§ 171.1.1-171.1.2

the terms "member of the fire department," "member of the department," or "member" shall mean any officer or employee of the fire department, excluding such officers and employees as are members of the retirement system under section 169 of the charter, who was or shall be subject to the charter provisions governing entrance requirements of members of the uniformed force of said department, and said terms further shall mean, from the effective date of their employment in said department, persons employed on the effective date hereof, regardless of age, or employed after said date at an age not greater than the maximum age then prescribed for entrance into employment in said uniformed force, to perform the duties now performed by members of the salvage corps in the fire department, or duties now performed under the titles of pilot of fireboats, marine engineer of fireboats, marine fireman of fireboats, or hydrant-gateman. Any fire service performed by such member of the fire department outside the limits of the city and county and under orders of a superior officer of any such member, shall be considered as city and county service, and any disability or death incurred therein shall be covered under the provisions of the retirement system.

"Retirement system" or "system" shall mean San Francisco City and County Employees' Retirement System as created in section 158 of the charter.

"Retirement board" shall mean "retirement board" as created in section 159 of the charter.

"Charter" shall mean the charter of the City and County of San Francisco.

Words used in the masculine gender shall include the feminine and neuter genders, and singular numbers shall include the plural and the plural the singular.

"Interest" shall mean interest at the rate adopted by the retirement board. [*New section, 1949*]

SECTION 171.1.2. Any member of the fire department who completes at least thirty years of service in the aggregate, regardless of age, or at least twenty-five years of service in the aggregate and attains the age of fifty-five years, said service to be computed under section 171.1.9, may retire for service at his option. Members shall be retired on the first day of the month next following

the attainment by them of the age of sixty-seven years during the twelve months ending June 30, 1949; the age of sixty-six years during the twelve months ending June 30, 1950, and thereafter, following the attainment of the age of sixty-five years. A member retired after meeting the service and age requirements in the two sentences next preceding, shall receive a retirement allowance equal to fifty per cent of the final compensation of said member, as defined in section 171.1.1, plus an allowance at the rate of one and two-thirds per cent of said final compensation, for each year of service rendered prior to attaining age sixty and after qualifying as to age and service for retirement. A member retired after attaining the age of sixty-five years, but before completing twenty-five years of service in the aggregate computed under section 171.1.9, shall receive a retirement allowance which bears the same ratio to fifty per cent of the final compensation of said member, as defined in section 171.1.1, as the service with which he is entitled to be credited, bears to twenty-five years. Any member may retire, regardless of age, after rendering twenty-five years of service in the aggregate, computed under section 171.1.9, but in such event, his retirement allowance shall be such as can be provided at the age of retirement by the actuarial value, at the age of retirement, of the retirement allowance to which he would be entitled at the date upon which he would qualify for retirement under the first sentence of this paragraph, deferred to that date. If, at the date of retirement for service, or retirement for disability resulting from an injury received in performance of duty, said member has no wife, children or dependent parents, who would qualify for the continuance of the allowance after the death of said member, or with respect to the portion of the allowance which would not be continued regardless of dependents, or upon retirement for disability resulting from other causes, with respect to all of the allowance and regardless of dependents at retirement, a member retired under this section, or section 171.1.3, may elect before the first payment of the retirement allowance is made, to receive the actuarial equivalent of his allowance or the portion which would not be continued regardless of dependents, as the case may be, partly in a lesser allowance to be received by him throughout his life, and partly in other benefits payable after his death to another person or persons, provided that such election shall be subject to all the conditions prescribed by the board of supervisors to govern

§ 171.1.2-171.1.3

similar election by other members of the retirement system, including the character and amount of such other benefits. [*New section, 1949; amended, 1949*]

SECTION 171.1.3. Any member of the fire department who becomes incapacitated for the performance of his duty by reason of any bodily injury received in, or illness caused by performance of his duty, shall be retired, and, if he is not qualified for service retirement shall receive a retirement allowance equal to seventy-five per cent compensation of said member, as defined in section 171.1.1. Said allowance shall be paid to him until the date upon which said member would have qualified for service retirement had he lived and rendered service without interruption in the rank held by him at retirement, and after said date the allowance payable shall be equal to the retirement allowance said member would have received if retired for service on said date, based on the average monthly compensation he would have received during the three years immediately prior to said date, had he lived and rendered service as assumed, but such allowance shall not be less than one-half of such average monthly compensation. If at the time of retirement because of disability, he is qualified as to age and service for retirement under section 171.1.2, he shall receive an allowance equal to the retirement allowance which he would receive if retired under section 171.1.2, but not less than fifty per cent of said final compensation. Any member of the fire department who becomes incapacitated for performance of his duty, by reason of a cause not included under the provisions of the immediately preceding sentence, and who shall have completed at least ten years of service in the aggregate, computed as provided in section 171.1.9, shall be retired upon an allowance of one and one-half per cent of the final compensation of said member as defined in section 171.1.1 for each year of service, provided that said allowance shall not be less than thirty-three and one-third per cent of said final compensation. The question of retiring a member under this section may be brought before the retirement board on said board's own motion, by recommendation of the fire commission, or by said member or his guardian. If his disability shall cease, his retirement allowance shall cease, and he shall be restored to the service in the rank he occupied at the time of his retirement. [*New section, 1949*]

SECTION 171.1.4. If a member of the fire department shall die before or after retirement by reason of an injury received in, or illness caused by the performance of his duty, a death allowance, in lieu of any allowance payable under any other section of the charter or by ordinance, on account of death resulting from injury received in or illness caused by the performance of duty, shall be paid, beginning on the date next following the date of death, to his surviving wife throughout her life or until her remarriage. If the member, at the time of death, was qualified for service retirement, but had not retired, the allowance payable shall be equal to the retirement allowance which the member would have received if he had been retired for service on the day of death, but such allowances shall not be less than one-half of the average monthly compensation earnable by said member during the three years immediately preceding death. If death occurs prior to qualification for service retirement, the allowance payable shall be equal to the compensation of said member at the date of death, until the date upon which said member would have qualified for service retirement, had he lived and rendered service without interruption in the rank held by him at death, and after said date the allowance payable shall be equal to the retirement allowance said member would have received if retired for service on said date, based on the average monthly compensation he would have received during the three years immediately prior to said date, had he lived and rendered service as assumed, but such allowance shall not be less than one-half of such average monthly compensation. If he had retired prior to death, for service or for disability resulting from injury received in, or illness caused by the performance of duty, the allowance payable shall be equal to the retirement allowance of the member, except that if he was a member under section 171.1 and retirement was for such disability, and if death occurred prior to qualification for the service retirement allowance, the allowance continued shall be reduced upon the date at which said member would have qualified for service retirement, in the same manner as it would have been reduced had the member not died. If there be no surviving wife entitled to an allowance hereunder, or if she die or remarry before every child of such deceased member attains the age of eighteen years, then the allowance which the surviving wife would have received had she lived and not remarried shall be paid to his child

or children under said age, collectively, to continue until every such child dies or attains said age, provided that no child shall receive any allowance after marrying or attaining the age of eighteen years. Should said member leave no surviving wife and no children under the age of eighteen years, but leave a parent or parents dependent upon him for support, the parents so dependent shall collectively receive a monthly allowance equal to that which a surviving widow otherwise would have received, during such dependency. No allowance, however, shall be paid under this section to a surviving wife following the death of a member unless she was married to the member prior to the date of the injury or onset of the illness which results in death. [*New section, 1949*]

SECTION 171.1.5. Upon the death of a member resulting from any cause, other than an injury received in or illness caused by performance of duty, (a) if his death occurred after qualification for service retirement, under section 171.1.2, or after retirement for service, one-half of his retirement allowance to which the member would have been entitled if he had retired for service at the time of death or one-half of the retirement allowance as it was at his death, as the case may be, shall be continued throughout life or until remarriage, to his surviving wife, or (b) if his death occurred, after retirement for disability by reason of injury received in or illness caused by performance of duty, his retirement allowance as it was at his death shall be continued throughout life or until remarriage, to his surviving wife, except that, if death occurred prior to qualification for service retirement allowance, the allowance continued shall be reduced upon the date at which said member would have qualified for service retirement, in the same manner as it would have been reduced had the member not died. If there be no surviving wife entitled to an allowance hereunder, or if she die or remarry before every child of such deceased members attains the age of eighteen years, then the allowance which the surviving wife would have received had she lived and not remarried shall be paid to his child or children under said age, collectively, to continue until every such child dies or attains said age, provided that no child shall receive any allowance after marrying or attaining the age of eighteen years. Should said member leave no

surviving wife and no children under age of eighteen years, but leave a parent or parents dependent upon him for support, the parents so dependent shall collectively receive a monthly allowance equal to that which a surviving wife otherwise would have received, during such dependency. No allowance, however, shall be paid under this section to a surviving wife unless she was married to the member prior to the date of the injury or onset of the illness which results in death if he had not retired, or unless she was married to the member at least one year prior to his retirement.

The surviving wife, in the event of death of the member after qualification for but before service retirement, may elect before the first payment of the allowance, to receive the benefit provided in section 171.1.7, in lieu of the allowance which otherwise would be continued to her under this section. If there be no surviving wife, the guardian of the child or children under age eighteen, may make such election, and if there be no such children, the dependent parent or parents may make such election. Persons heretofore retired under charter section 171, as members of the fire department at the time of retirement, shall be subject to the provisions of this section. "Qualified for service retirement," "Qualification for service retirement" or "Qualified as to age and service for retirement," as used in this section and other sections to which persons who are members under section 171.1 are subject, shall mean completion of thirty years of service regardless of age, or twenty-five years of service and attainment of age fifty-five, said service to be computed under section 171.1.9.

The effective date of this amendment shall be the first day of the month following approval by the State Legislature. [*New section, 1949; amended, 1949; 1957*]

SECTION 171.1.5.1. Every allowance based on the average monthly compensation earnable by the member during the ten years prior to retirement, and payable for time commencing on the effective date of this section, to or on account of persons who were retired, as members under section 171, for disability resulting from bodily injury received in the performance of duty, shall be adjusted to the amount it would be, if it had been based on the monthly compensation fixed by the board of supervisors as of

July 1, 1956, for the rank or position held by such retired member in the fire department prior to retirement. This section does not authorize any decrease in any allowance from the amount being paid at said effective date, nor does this section give any retired member, or any beneficiary of such member, or his successors in interest, any claim against the city and county for any increase in any allowance paid or payable for the time prior to its effective date. Adjustment in reserves under allowances which are changed according to this section, shall be made on the basis of current interest rate and mortality tables.

The increase in the retirement allowance shall be apportioned according to service rendered by the member in the same manner that the allowance prior to increase was apportioned. Contributions to the retirement system, necessary for the payment of the increase of the portion of the retirement allowances which is paid from reserves held by the retirement system, shall be provided from the reserves held by the retirement system on account of members under section 171.1, the necessary amount being transferred upon said effective date, from said reserves to the reserves held by the retirement system to meet the obligations on account of benefits that have been granted and on account of prior service of members. The contribution being required of the city and county currently, as a percentage of salaries of persons who are members under section 171.1, shall be increased to a percentage determined by the actuary as necessary to replace the reserves so transferred. Contributions to the retirement system necessary for the payment of said increases with reference to current and prior service portions of the allowances which are not paid from reserves held by the retirement system, shall be paid to the system by the city and county by annual appropriations, provided that such appropriation for any year shall not be less than the amount disbursed during that year on account of said increases. The effective date of this section shall be the first day of the month following approval by the State Legislature. [*New section, 1957*]

SECTION 171.1.6. That portion of any allowance payable because of the death or retirement of any member of said department which is provided by contributions of the city and county, shall be reduced in the manner fixed by the board of supervisors,

by the amount of any benefits other than medical benefits, payable to or on account of such person, under the Workmen's Compensation Insurance and Safety Law of the State of California and because of the injury or illness resulting in said death or retirement. Such portion which is paid because of death or retirement which resulted from injury received in or illness caused by performance of duty, shall be considered as in lieu of all benefits, other than medical benefits, payable to or on account of such person under said law of the State of California and shall be in satisfaction and discharge of the obligation of the city and county to pay such benefits. [*New section, 1949*]

Under the provisions of this section it is clear that the portion of allowance paid because of death or retirement on account of injury is paid in lieu of, or in place of, all other benefits and is in satisfaction of the city's obligation under the state law. **Carey v. Retirement Board of San Francisco** (1955) 131 Cal. App. (2d) 739, 281 Pac. (2d) 25.

SECTION 171.1.7. If a member of the fire department shall die, before retirement, from causes other than an injury received in or illness caused by the performance of duty, or regardless of cause, if no allowance shall be payable under section 171.1.4 or 171.1.5 preceding, a death benefit shall be paid to his estate or designated beneficiary, the amount of which and the conditions for the payment of which shall be determined in the manner prescribed by the board of supervisors for the death benefit of other members of the retirement system. Upon the death of a member after retirement and regardless of the cause of death, a death benefit shall be paid to his estate or designated beneficiary the amount of which and the conditions for the payment of which shall be determined in the manner prescribed by the board of supervisors for the death benefit of other members of the retirement system. The effective date of this amendment shall be the first day of the month following approval by the State Legislature. [*New section, 1949; amended, 1949, 1957*]

SECTION 171.1.8. Should any member of the department cease to be employed as such a member, through any cause other than death or retirement or transfer to another office or department, all of his contributions, with interest credited thereon, shall be refunded to him subject to the conditions prescribed by the board of supervisors to govern similar terminations of employment of

other members of the retirement system. If he shall again become a member of the department, he shall redeposit in the retirement fund, the amount refunded to him. Contributions, with interest, which are credited because of service rendered in any other office or department and which will not be counted under section 171.1.9, to any person who becomes a member of the retirement system under this section, shall be refunded to him forthwith. Should a member of the fire department become an employee of any other office or department, his accumulated contribution account shall be adjusted by payments to or from him as the case may be to make the accumulated contributions credited to him at the time of change, equal to the amount which would have been credited to him if he had been employed in said other office or department at the rate of compensation received by him in the fire department and he shall receive credit for service for which said contributions were made, according to the charter section under which his membership in the retirement system continues. *[New section, 1949]*

SECTION 171.1.9. The following time shall be included in the computation of the service to be credited to the member for the purposes of determining whether such member qualifies for retirement, and calculating benefits, excluding, however, any time, the contributions for which were withdrawn by said member upon termination of his service while he was a member under any other charter section, and not redeposited upon re-entry into service:

(1) Time during and for which said member is entitled to receive compensation because of services as a member of the fire or police department.

(2) Time during which said member is entitled to receive compensation while a member of the retirement system, because of service rendered in other offices and departments prior to the effective date hereof, provided that accumulated contributions on account of such service, previously refunded, are redeposited, with interest from date of refund to date of redeposit, at times and in the manner fixed by the retirement board; and solely for purpose of determining qualification for retirement under section 171.1.3 for disability not resulting from injury received in, or illness caused by performance of duty, time during which said

member serves, after the effective date hereof, and receives compensation because of services rendered in other offices and departments.

(3) Time during which said member is absent from a status included in paragraphs (1) or (2) next preceding, by reason of service in the armed forces of the United States of America, or by reason of any other service included in section 161 of the charter, during any war in which the United States was or shall be engaged or during other national emergency, and for which said member contributed or contributes to the retirement system or for which the city and county contributed or contributes on his account. [*New section, 1949*]

SECTION 171.1.10. All payments provided under this section shall be made from funds derived from the following sources, plus interest earned on said funds:

(1) The normal rate of contribution of each member under this section shall be based on his age taken to the next lower complete quarter year, (a) at the earlier of the dates he became a member under section 165, 165.2 or 171, in the case of persons who are members under these sections, or (b) on his age at the date he becomes a member under section 171.1 in the case of persons who become members on or after the effective date of this amendment, without credit for service counted under section 171.1.9. The age of entrance into the fire department shall be determined by deducting the member's service credited under section 171.1.9 as rendered prior to the date upon which his age is based for determination of his rate of contribution according to the sentence next preceding, from said age. The normal rate of contribution of each such member, to be effective from the effective date of membership under section 171.1, shall be such as, on the average for such member, will provide, assuming service without interruption, under section 171.1.2, one-third of that portion of the service retirement allowance to which he would be entitled, without continuance to dependents, upon first qualifying as to age and service, for retirement under that section, which is based on service rendered after the date upon which his age is based for determination of his rate of contribution according to the first sentence in this paragraph, and assuming the contribution to be made from

§ 171.1.10

that date. The normal rate of contribution, however, shall not exceed ten per cent.

(2) The dependent contributions of each member under this section which shall be required of each member throughout his membership in addition to the normal contributions, and in the same manner as normal contributions, shall be such as, on the average for such member, will provide, assuming service without interruption under section 171.1.2, and upon his first qualifying as to age and service for retirement under that section, one-third of the portion of his allowance, which is to be continued under section 171.1.5 after his death and throughout the life of a surviving wife whose age at said death is three years less than the age of said member. If, at the date of retirement for service or retirement for disability resulting from injury received in performance of duty, said member has no wife who would qualify for the continuance of the allowance to her after the death of said member, or upon retirement for disability resulting from other causes, regardless of his marital condition, the dependent contributions with accumulated interest thereon, shall be paid to him forthwith. The dependent rate of contribution, however, shall not exceed the difference between ten per cent and the member's normal rate of contribution, and said dependent rate may be taken as a flat percentage of the member's normal rate, regardless of the age of qualification for service retirement.

(3) There shall be deducted from each payment of compensation made to a member under this section, a sum determined by applying the member's rates of contribution to such compensation payment. The sum so deducted shall be paid forthwith to the retirement system. Said contribution shall be credited to the individual account of the member from whose salary it was deducted, and the total of said contributions, together with interest credited thereon in the same manner as is prescribed by the board of supervisors for crediting interest to contributions of other members of the retirement system, shall be applied to provide part of the retirement allowance granted to, or allowance granted on account of said member, under this section or shall be paid to said member or his estate or beneficiary as provided in sections 171.1.7, 171.1.8 and 171.1.9.

(4) Contributions based on time included in paragraphs (1),

(2) and (3) of section 171.1.9, and deducted prior to the effective date thereof, from compensation of persons who become members under section 171.1, and standing with interest thereon, to the credit of such members on the records of the retirement system on said date, shall continue to be credited to the individual accounts of said members and shall be combined with and administered in the same manner as the contributions deducted after said date.

(5) The total contributions, with interest thereon, made by or charged against the city and county and standing to its credit, in the accounts of the retirement system, on account of persons who become members under this section, shall be applied to provide the benefits under this section.

(6) The city and county shall contribute to the retirement system such amounts as may be necessary, when added to the contributions referred to in the preceding paragraphs of this section 171.1.10, to provide the benefits payable under this section. Such contributions of the city and county to provide the portion of the benefits hereunder which shall be based on service rendered by each member prior to the date upon which his age is based for determination of his rate of contribution in paragraph (1) section 171.1.10, shall not be less during any fiscal year than the amount of such benefits paid during said year. Such contributions of the city and county to provide the portion of the benefits hereunder which shall be based on service rendered by respective members on and after the date stated in the next preceding sentence, shall be made in annual installments, and the installment to be paid in any year shall be determined by the application of a percentage to the total compensation paid during said year, to persons who are members under section 171.1, said percentage to be the ratio of the value on the effective date hereof, or at the later date of a periodical actuarial valuation and investigation into the experience under the system as provided by the board of supervisors, of the benefits thereafter to be paid under this section, from contributions of the city and county, less the amount of such contributions, and plus accumulated interest thereon, then held by said systems to provide said benefits on account of service rendered by respective members after the date stated in the sentence next preceding, to the value at said respective dates of

salaries thereafter payable to said members. Said values shall be determined by the actuary, who shall take into account the interest which shall be earned on said contributions, the compensation experience of members, and the probabilities of separation by all causes, of members from service before retirement and of death after retirement. Said percentage shall be changed only on the basis of said periodical actuarial valuation and investigation into the experience under the system.

(7) To promote the stability of the retirement system through a joint participation in the result of variations in the experience under mortality, investment and other contingencies the contributions of both members and the city and county held by the system to provide the benefits under this section, shall be a part of the fund in which all other assets of said system are included. Nothing in this section shall affect the obligations of the city and county to pay to the retirement system any amounts which may or shall become due under the provisions of the charter prior to the effective rate hereof, and which are represented on said effective date, in the accounts of said system by debits against the city and county. [*New section, 1949*]

SECTION 171.1.11. Upon the completion of the years of service set forth in section 171.1.2 as requisite to retirement, a member shall be entitled to retire at any time thereafter in accordance with the provisions of said section 171.1.2, and nothing shall deprive said member of said right. [*New section, 1949*]

SECTION 171.1.12. No person retired as a member under section 171.1 for service or disability and entitled to receive a retirement allowance under the retirement system shall serve in any elective or appointive position in the city and county service, including membership on boards and commissions, nor shall such person receive any payment for service rendered to the city and county after retirement, provided that service as an election officer or juror shall not be affected by this section.

Notwithstanding any provision in this charter to the contrary, should any such retired person engage in a gainful occupation prior to attaining the age of sixty, the retirement board shall reduce that part of his monthly retirement allowance which is

provided by contributions of the city and county, to an amount which, when added to the amount earned monthly by him in such occupation, shall not exceed the amount of the compensation earnable at the time he engages in the gainful occupation, by the member if he then held the position which he held at the time of his retirement, or, if that position has been abolished, the compensation earnable by the member if he held the position from which he was retired, immediately prior to its abolition. [*New section, 1949*]

SECTION 171.1.13. Any section or part of any section in this charter, insofar as it should conflict with these sections 171.1, 171.1.1, 171.1.2, 171.1.3, 171.1.4, 171.1.5, 171.1.6, 171.1.7, 171.1.8, 171.1.9, 171.1.10, 171.1.11, 171.1.12, 171.1.13, or 171.1.14, or with any part thereof, shall be superseded by the contents of said sections. In the event that any word, phrase, clause or section of these sections shall be adjudged unconstitutional, the remainder thereof shall remain in full force and effect. [*New section, 1949*]

SECTION 171.1.14. Sections 171.1, 171.1.1, 171.1.2, 171.1.3, 171.1.4, 171.1.5, 171.1.6, 171.1.1, 171.1.8, 171.1.9, 171.1.10, 171.1.11, 171.1.12, 171.1.13, and 171.1.14, contained in the proposition therefor submitted to the electorate on November 2, 1948, shall take effect on the first day of July, 1949. [*New section, 1949*]

Compensation Insurance Payments

SECTION 172. The benefit provisions of the workmen's compensation laws included in the Labor Code of the State of California, as they effect the benefits provided for or payable to or on account of officers and employees, including teachers of the city and county, shall be administered exclusively by the retirement board, provided that the retirement board shall determine whether the city and county, through the retirement system, shall assume the risks under the said law, in whole or in part, or whether it shall reinsure such risks, in whole or in part, with the state compensation insurance fund. Benefits under such risks as may be assumed by the city and county, and premiums under such risks as may be reinsured shall be paid by the retirement system, and an amount equal to the total of such benefits and premiums, as determined by the actuary for any fiscal year,

including the deficit brought forward from previous years, shall be paid during such fiscal year to the retirement system by the city and county.

Every patrol special police officer, as referred to in section 35 of this charter shall be entitled, under this section, to the benefits of such compensation law, if injured while performing regular city and county police duties, which shall include only duties performed while preventing the commission of a crime, or while apprehending the person or persons committing such crime, and shall not include duties of any character performed for private employers either on or off the premises of such employers, provided that no payments shall be made under this paragraph in the event that the patrol special officer shall receive the benefits of such compensation law from any other source.

Whenever any member of the fire or police department, as defined in sections 169, 171.1.1 and 168.1.1, respectively, is incapacitated for the performance of his duties by reason of any bodily injury received in or illness caused by the performance of his duty, as determined by the retirement board, he shall become entitled, regardless of his period of service with the city and county, to disability benefits equal to and in lieu of his salary as fixed by the charter, while so disabled, for a period or periods not exceeding twelve months in the aggregate, with respect to any one injury or illness. Said disability benefit shall be reduced in the manner fixed by the board of supervisors by the amount of any benefits other than medical benefits payable to such person under the Labor Code concurrently with said disability benefit, and because of the injury or illness resulting in said disability. Such disability benefits as are paid in the absence of payments of any benefits other than medical benefits under the workmen's compensation laws included in said Labor Code, shall be considered as in lieu of such benefits, payable to such person under the said Code concurrently with said disability benefits, and shall be in satisfaction and discharge of the obligations of the city and county to pay such benefits under the Labor Code. Medical treatment which may become necessary to relieve or cure said member from the effects of the injury or illness shall be furnished by the city and county, in the same manner that such treatment is furnished under said Labor Code, but without first requiring continu-

ing awards of such treatment by the Industrial Accident Commission of the State of California, relating to impairments of permanent or of extended and uncertain duration. The provisions of this paragraph shall be administered exclusively by the retirement board, and the city and county shall pay to the retirement system during each fiscal year, an amount equal to the total disability benefits paid by said system during that year. A member of the fire or police department shall receive credit as service, under the retirement system, for time during which he is incapacitated for performance of duty and receives said disability benefit. Contributions for the retirement system shall be deducted from said benefits in the same manner as they would be deducted from salary paid to him, and the city and county shall contribute, in addition to its other contributions provided herein, to the retirement system on the basis of said benefits in the same manner as it would contribute on salary paid to said member. [*Amended, 1937; 1952; 1953*]

A patrol special police officer appointed pursuant to § 35.10 is an employee of San Francisco within this section and the evidence supported a finding that his fatal injury arose out of and in the course of employment by the city where it appeared that he was apparently engaged in attempting to prevent the commission of a crime or to apprehend a criminal when he was killed. **San Francisco v. Industrial Acc. Com.** (Odom) (1947) 12 C. Comp. Cas. 207.

HEALTH SERVICE SYSTEM

SECTION 172.1. A health service system is hereby established as a department of the city and county government and shall be subject to section 172.1 and sections 172.1.1, 172.1.2, 172.1.3, 172.1.4, 172.1.5, 172.1.6, 172.1.7, 172.1.8, 172.1.9, 172.1.10, 172.1.11, 172.1.12, 172.1.13, 172.1.14 and 172.1.15. Said system shall be administered by a board to be known as the health service board. The members of the system shall consist of all employees, which shall include officers, of the city and county and of the San Francisco Unified School District who are members of the retirement system. Any employee who adheres to the faith or teachings of any recognized religious sect, denomination or organization and, in accordance with its creed, tenets or principles, depends for healing upon prayer in the practice of religion shall be exempt from the system upon filing annually with the health service board an affidavit stating such adherence and dependence and disclaiming any benefits under the system. The health service board shall have the power to exempt any person whose annual compensation exceeds six thousand dollars (\$6,000) and any person who has otherwise provided for adequate medical care. [*New section, 1937; amended, 1941; 1943; 1957; 1958*]

This section is not subject to the objections that it is invalid because the health board might exercise its delegated powers in a discriminatory manner, that it makes an unconstitutional delegation of power in violation of Const. Art. XI, § 13, that it conflicts with the Insurance Code in authorizing an insurance business without a certificate of authority from the insurance commissioner, that it denies due process of law in providing a compulsory deduction in an uncertain amount from salaries of employees, that the exemptions constitute a denial of equal protection of the law, or that it illegally includes school teachers. **Butterworth v. Boyd** (1938) 12 Cal. (2d) 140, 82 Pac. (2d) 434, 126 A.L.R. 838.

There is no improper discrimination in this section in excluding employees with salaries over a certain sum per month, those relying on healing by prayer, and those who already have adequate medical care. **Butterworth v. Boyd** (1938) 12 Cal. (2d) 140, 82 Pac. (2d) 434, 126

Cited in **Adams v. San Francisco** (1949) 94 Cal. App. (2d) 586, 211 Pac. (2d) 368; 212 Pac. (2d) 272.

SECTION 172.1.1. The health service board on the effective date hereof shall consist of seven members as follows: the chairman of the finance committee of the board of supervisors, the city attorney, two members appointed by the mayor one of whom shall be

a resident official of an insurance company and the other a doctor of medicine, and three members elected by the members of the system from among their number. The city attorney may designate, by written document filed with the board, an assistant city attorney to attend board meetings and to act for him in his place. The terms of office of the members, other than the two ex-officio members, shall be five years, one term expiring on May 15 of each year; provided, however, that the first three elective members shall be selected by lot from the health service board members whose terms under the law as it existed prior to this amendment would not have expired on May 14, 1958, by classifying themselves so that one of the members whose terms would have expired in 1959 shall serve until May 15, 1959; and two of the members whose terms would have expired in 1960 shall serve, one until May 15, 1961, and the other until May 15, 1963; and provided further that of the first two members appointed by the mayor, one shall serve until May 15, 1960, and the other until May 15, 1962. The terms of each of the members holding office under the law as it existed prior to this amendment and not so selected shall expire upon the effective date hereof. Each member of the health service board shall give bond in the sum of ten thousand dollars (\$10,000), the premium on which shall be paid out of the funds of the system. A vacancy in the offices appointive by the mayor shall be filled by appointment by the mayor for the unexpired term. A vacancy in an elective office shall be filled by a special election to be completed within sixty days after the vacancy occurs unless a regular election is to be held and completed within six months after such occurrence. Candidates for elective membership on the health service board shall be nominated by a written nomination of twenty members filed with the registrar of voters not earlier than April 1st nor later than April 15th of 1959 and each year thereafter in which a vacancy occurs. The registrar of voters shall prepare ballots and shall furnish the same to all members of the system between April 15th and April 25th and shall receive the ballots between April 25th and May 7th and canvass and certify the results on May 8th. The registrar of voters shall have power to make such regulations

respecting the form, distribution and canvassing of the ballots as may be necessary to secure secrecy of the ballots and prevent fraud. The persons equal in number to the number to be elected who received the greatest number of votes shall be declared elected. Not more than one employee of any one department or office may be a member of the health service board. [*New section, 1958*]

SECTION 172.1.2. The medical care plans in effect upon the effective date hereof shall continue in force and effect until re-cinded or superseded by a new plan or plans adopted by the health service board and approved by ordinance of the board of supervisors, adopted by three-fourths of its members. [*New section, 1958*]

SECTION 172.1.3. The board shall have power and it shall be its duty by a two-thirds vote of the entire membership of the health service board to adopt a plan or plans for rendering medical care to members of the system, or for the indemnification of the cost of said care, or for obtaining and carrying insurance against such costs or for such care.

Such plan or plans as may be adopted, shall not become effective until approved by ordinance of the board of supervisors, adopted by three-fourths of its members.

The board of supervisors shall secure an actuarial report of the costs and effect of any proposed change in the benefits of the health service system or rates of contribution before enacting an ordinance or before voting to submit any proposed charter amendment providing for such change. [*New section, 1958*]

SECTION 172.1.4. In January of each year, or more often if it deems necessary, at public hearings, the health service board shall review and determine the adequacy of medical care provided for members of the system and the adequacy of fee schedules and the compensation paid for all services rendered and it may make such revisions therein as it deems equitable but such revisions shall not become effective until approved by ordinance of the board of supervisors adopted by three-fourths of its members. [*New section, 1958*]

SECTION 172.1.5. Each plan shall make detailed and specific provision for the benefits to be provided thereunder and for the rates of contribution required to support the plan. [*New section, 1958*]

SECTION 172.1.6. Each plan may make provision for the participation in the benefits of the system by the dependents of members, retired city and county employees, temporary city and county employees, such other dependents of deceased and retired city and county employees as the board of supervisors may authorize by ordinance, teachers and other employees of the San Francisco Unified School District retired under the San Francisco City and County Employees' Retirement System, and resigned employees of the city and county and resigned teachers and employees of the school district whose resignations occur after June 15, 1955, and within thirty days immediately prior to the date on which, but for their resignations, they would have become retired members of the said retirement system, or whose relinquishment of retirement allowances as permitted by the charter occurs after such date and resigned employees of the San Francisco Unified School District not otherwise included. A resigned employee or teacher is one whose employment has terminated other than by retirement, discharge or death or who has relinquished retirement allowances. The purpose of empowering the health service board to make provision for the participation in the benefits of the system to the aforementioned resigned teachers and employees of the San Francisco Unified School District is to enable them, subject to the health service board's exercise of its power, to participate in the benefits of the system after transferring to the State Teacher's Retirement System from the San Francisco City and County Employees' Retirement System. The purpose of empowering the health service board to make provision for participation in the benefits of the system by the aforementioned resigned employees of the city and county and other resigned employees of the San Francisco Uni-

fied School District is to permit the health service board to have power to treat them the same as it treats resigned teachers and employees of the San Francisco Unified School District. [*New section, 1958*]

SECTION 172.1.7. No member of the system shall be required to accept the services or medical supplies of any physician (physician includes physicians and surgeons, optometrists, dentists, chiropodists and osteopathic and chiropractic practitioners licensed by California State Law and within the scope of their practice as defined by California State Law), person licensed to treat human diseases without the use of drugs, nurse, pharmacist or hospital selected by the health service board, but, subject to rules and regulations of that board, every member shall have the right to select, of his own choice, any duly licensed physician, as defined herein, person licensed to treat human diseases without the use of drugs, nurse, pharmacist, hospital or other agency of medical care as herein defined, who or which will render the required services pursuant to said rules and regulations, and the health service board shall make provision for the exercise of such choice; and is hereby expressly prohibited from entering into any exclusive contract for the rendering of said services.

Any duly licensed physician, as defined herein, person licensed to treat human diseases without the use of drugs, nurse, pharmacist, hospital or other agency of medical care shall have the right to furnish such services or medical supplies at uniform rates of compensation to be fixed by the health service board.

Such rates of compensation and any and all proposed contracts respecting the rendering of such services shall be reviewed by the retirement board of the city and county and shall not become effective unless and until approved by the retirement board. The retirement board may approve, refer to the health service board for further consideration, or disapprove any matter or proposal which is within its jurisdiction under the provisions of this section, and it shall act within sixty (60) days after any matter has been submitted to it, and failure of the retirement board to ap-

prove, refer or disapprove the same within said period shall constitute an approval. [*New section, 1958*]

SECTION 172.1.8. The health service board shall have power and it shall be its duty:

(a) To establish and maintain detailed historical costs for medical care, hospital care.

(b) To review such costs annually.

(c) To apply benefits without special favor or privilege.

(d) To put said plans into effect and through its medical director to conduct and administer the same and, for all or any of said purposes, to contract therefor and use the funds of the system.

(e) To make rules and regulations for the transaction of its business, the granting of exemptions and the admission to the system of persons who are hereby made members thereof and such other officers and employees as may voluntarily become members of the system with the approval of the health service board.

(f) To receive, consider and, within sixty (60) days after receipt, act upon any matter pertaining to the administration, operation or conduct of the health service system submitted to it in writing by any member of the system or any person who has contracted to render medical care to the members of the system. [*New section, 1958*]

SECTION 172.1.9. The health service board shall appoint a full time medical director who shall be a doctor of medicine with experience in administering health plans or in comparable work. He shall hold office at its pleasure. The medical director shall have all of the powers and responsibilities of an appointing officer, a department head, and a chief executive under the provisions of the charter. The health service board shall administer the system through the medical director. The medical director shall be responsible to the health service board as a board, but not to any individual member or committee thereof. Instead of a full-time medical director, the board may appoint a full-time executive officer who is not a doctor of medicine, but with ex-

perience in administering health plans or in comparable work, and a part-time medical advisor who shall be a doctor of medicine with such experience, and both of whom shall hold office at its pleasure. If an executive officer is appointed, the provisions of this and other sections which would apply otherwise to the medical director shall apply equally and instead to the executive officer. The health service board and each committee of the board shall confine its activities to policy matters and to matters coming before it as an appeal board. The health service board shall prepare its plans, rules and regulations so that they are clear, definite and complete and so that they can be readily administered by the medical director and his staff. [*New section, 1958*]

SECTION 172.1.10. Except as otherwise specifically provided herein, all provisions of the charter shall be fully applicable to the health service board, the health service system and its medical director and employees in the same manner that they apply to other boards, commissions, and departments of the city and county. All employees of the health service system who are actually employed, or on authorized leave of absence from employment on the effective date of this amendment shall be continued in their respective positions as if appointed thereto after examination and certification from a civil service list of eligibles and thereafter shall be governed by and subject to the civil service provisions of this charter. Each such employee shall, for purposes of civil service seniority, be deemed to have been appointed to such position by the city and county upon the date of commencement of his occupancy thereof and shall also retain all other civil service rights and privileges held immediately prior to the effective date of this amendment. [*New section, 1958*]

SECTION 172.1.11. There is hereby created a health service system fund. The costs of the health service system shall be borne by the members of the system and retired persons, the City and County of San Francisco because of its members and retired persons and the San Francisco Unified School District because of its members and retired persons. A retired person as used in this paragraph means a former member of the health service system retired under the San Francisco City and County Employees' Retirement System.

The city and county and the school district shall each contribute to the health service system fund amounts sufficient for the following purposes, and subject to the following limitations:

(a) All funds necessary to efficiently administer the Health Service System;

(b) Matching contributions for the fiscal year commencing July 1, 1962, and each fiscal year thereafter, equal to the amounts contributed thereto by members of the system, provided, however, that the total amount contributed by the city and county and the school district to the health service system fund in each fiscal year, for this purpose, shall not exceed an amount equal to the tax yield that can be produced in each fiscal year by six cents in the tax rate on each one hundred dollars (\$100.00) valuation of the real and tangible personal property assessed in and subject to taxation by the city and county and the school district.

(c) Monthly contributions required from retired members participating in the system shall be equal to the monthly contributions required from members in the system; provided, however, that for the fiscal year commencing July 1, 1962, and for each fiscal year thereafter, the city and county and the school district shall contribute funds sufficient to defray the difference in cost to the system in providing the same health coverage to retired members as is provided for active employee members thereof.

The city and county and the San Francisco Unified School District shall not contribute to the health service system fund any sums, except as hereinbefore set forth, on account of participation in the benefits of the system by members' dependents, retired persons' dependents, persons who retired and elected not to receive benefits from San Francisco City and County Employees' Retirement System and resigned employees and teachers defined in section 172.1.6.

It shall be the duty of the board of supervisors and of the board of education annually to appropriate to the health service system fund such amounts as are necessary to cover the obligation of the city and county and of the San Francisco Unified

School District hereby imposed. Contributions to the health service system fund of the city and county and of the school district shall be charged against the general fund or the school, utility, bond or other special fund concerned. [*New section, 1958. Amended, 1962*]

Cited in *Martin v. San Francisco* (1959) 168 Cal. App. (2d) 570, 336 Pac. (2d) 239.

SECTION 172.1.12. The health service board shall determine and certify to the controller the amount to be paid monthly by the members of the system to the health service system fund for the purposes of the system hereby created. The controller shall deduct said sums from the compensation of the members and shall deposit the same with the treasurer of the city and county to the credit of the health service system fund.

Such deductions shall not be deemed to be a reduction of compensation under any provision of this charter.

The health service board shall have control of the administration and investment of the health service system fund, provided that all investments shall be of the character legal for insurance companies in California. Disbursements from the fund shall be made only upon audit by the controller and the controller shall have and exercise the accounting and auditing powers over the health service system fund which are vested in him by this charter with respect to all other municipal boards, officers and commissions. [*New section, 1958*]

SECTION 172.1.13. The term "medical care" shall be defined by the health service board.

All acts performed and services rendered under the provisions of this section shall be performed in accordance with the provisions as to professional conduct prescribed by the statutes of the State of California regulating such professional conduct and services.

Medical care, as defined by the health service board, shall not be furnished or supplied to any member of the system by or in any of the public health and hospital facilities of the city and county, except that emergency medical and hospital care may be

§ 172.1.13-172.1.14-172.1.15

rendered to any member of the system in the usual course of emergency health service. [*New section, 1958*]

The use of the expression "adequate medical care" in former § 172.1 did not render the charter provision subject to the objection that it was invalid because of the failure to set up a standard of such care. **Butterworth v. Boyd** (1938) 12 Cal. (2d) 140, 82 Pac. (2d) 434, 126 A.L.R. 838.

SECTION 172.1.14. Except as herein provided members of the system shall have and possess no claim or recourse against any of the funds of the municipality by virtue of the adoption or operation of any plan for rendering medical care, indemnifying costs of said care or carrying insurance against such costs, but except as herein provided, the claim and recourse of any such member shall be limited solely to the funds of the system. All expenses of the system shall be paid exclusively from the health service system fund, and, except as herein provided, the city and county and the San Francisco Unified School District shall not appropriate or contribute funds in any manner for the purposes of the system hereby established and provided. [*New section, 1958*]

SECTION 172.1.15. The board of supervisors is authorized to enact by a vote of three-fourth of its members, any and all ordinances necessary to carry out the provisions of sections 172.1 to and including 172.1.14.

Any surplus or deficit existing in the health service fund on the effective date hereof shall belong to or be the obligation of members, as the case may be, and the city and county and the San Francisco Unified School District shall neither receive payment nor credit nor shall it contribute to such fund on account of medical care rendered prior to such date. [*New section, 1958*]

ELECTIONS

Registrar of Voters

SECTION 173. The conduct, management and control of the registration of voters, and of the holding of elections, and of all matters pertaining to elections in the city and county shall be vested exclusively in the registrar of voters. Except as in this charter otherwise provided, he shall succeed to the powers and duties of the board of election commissioners at twelve o'clock noon on the 8th day of January, 1932, at which time the terms of the members of said board shall terminate, and such board as theretofore existing shall be abolished. He shall establish precincts in the city and county as provided by law. The regular and temporary forces under the registrar, and the temporary forces, shall be appointed by him subject to the civil service provisions of this charter.

Municipal Elections

SECTION 174. On Tuesday after the first Monday in November in 1931 and every second year thereafter, there shall be held in the city and county an election to be known as the general municipal election, at which the electors of the city and county shall choose such officers as are required by this charter to be elected at that time. Special municipal elections shall be called by the registrar when required by this charter on the filing of appropriate initiative, referendum or recall petitions, as provided by this charter, and may be called by the supervisors for bond issues, declarations of policy, or for the voting on candidates for city and county offices not subject to election at general municipal elections.

All provisions of the general laws of this state, including penal laws, respecting the registration of voters, initiative, referendum and recall petitions, elections, canvass of returns and all matters pertinent to any and all of these, shall be applicable to the city and county, except as otherwise provided by this charter or by ordinance adopted by the board of supervisors as authorized by this charter relative to any rights, powers or duties of the city and county or its officers. When not prohibited by general law, the supervisors by ordinance may provide that the publication of precincts and polling places shall be by posting only.

Nomination of Elective Officers

SECTION 175. The name of a candidate for an elective office shall be printed upon the ballot when a declaration of candidacy and certificates of not less than ten nor more than twenty sponsors shall have been filed on his behalf, and when the nomination shall be made in the following manner: The candidate, not more than sixty days before the municipal election in November, shall file with the registrar a declaration of his candidacy, in the form prescribed by the registrar for all candidates, including statements of his qualifications in not to exceed one hundred words, subscribed by him before the registrar. The registrar shall forthwith certify to the said subscription and its date and retain and file the declaration. The candidate shall pay to the registrar at the time of filing his declaration of candidacy the sum of thirty dollars (\$30). After said declaration shall have been signed, certified and filed, and not later than forty-five days before said election in November, not less than ten nor more than twenty sponsors for the said candidate, who are electors of the city and county qualified to vote at the said municipal election, shall appear before the registrar and shall certify under oath to the qualifications of the said candidate on a form of certificate prescribed by the registrar for all sponsors of all candidates. The candidate shall have the right to reject any unsolicited sponsor.

In the event the registrar shall refuse to file such declaration of candidacy or certificate of a sponsor thereof, he shall forthwith designate in writing on the declaration or certificate the defect thereof, or other reason for refusing to file the same, and shall return the same to the party tendering it. No defect in any declaration or certificate presented to the registrar shall prevent the filing of another declaration or certificate within the period allowed for presenting the declaration or certificate. The name of every candidate who has been duly and regularly nominated shall be placed on the ballot under the title of the office for which he is a candidate, provided that a candidate whose nomination has been completed, may, not less than forty days before a municipal election, withdraw as a candidate by filing with the registrar his withdrawal, naming the office; such withdrawal must be signed and sworn to by the person withdrawing.

The name of every candidate who has been nominated for

office as hereinbefore provided shall be placed on the ballot in alphabetical order in accordance with the initial letter of his surname, under the heading of the office for which said candidate has been nominated in the following manner: The name of the candidate highest on the alphabetical list of candidates for any particular office shall be printed first on the ballot under the proper heading for said office in the lowest numbered assembly district in the city and county. Thereafter, in each succeeding assembly district, the name of the candidate appearing first for said office in the last preceding district shall be placed last and the order of the names of the other candidates for said office shall remain unchanged.

In the event that the number of candidates in any group shall exceed the number of assembly districts in the city and county then the total number of candidates in such group shall be divided by the number of assembly districts and the quotient of said division, if an integral number, or, if it be a fractional number, then the next highest integral number, shall be the number of candidates to be taken from the beginning of the list of said candidates and placed at the end of said list of candidates in each succeeding assembly district.

Immediately under the name of each candidate and not separated therefrom by any line may appear, at the option of the candidate, one of the following designations:

- (a) Words designating the city, county, district or state office which the candidate then holds.
- (b) If the candidate be a candidate for the same office which he then holds, and only in that event, the word "incumbent."
- (c) The word designating the profession, vocation or occupation of the candidate. The profession, vocation or occupation so designated shall be the same as appears in the affidavit of registration of the candidate.

In all cases words so used shall be printed in eight-point roman boldface capitals and lower-case type.

No incumbent shall have any further preference in the location of his name on said ballot unless the same is permitted by this section.

The registrar shall preserve in his office for a period of four years all candidates' declarations and all sponsors' certificates filed in accordance with this section. [*Amended, 1943; 1957*]

Material to Be Mailed to Voters

SECTION 176. The registrar shall, before each municipal election, cause to be printed in pamphlet form and mailed to each registered voter with the sample ballot, a copy of all declarations and statements of qualifications of candidates received by him, to be followed by the names and addresses and occupations of all sponsors of all officers to be voted for in said city and county.

The registrar shall cause ballots to be printed identical with the ballot to be used in each assembly district at the election and shall furnish copies of the same on application to registered voters at his office at least five days before the date fixed for such election, and shall mail to each voter entitled to vote at such election a copy of the ballot to be used in his district, so that all said sample ballots shall have been mailed at least eight days before said election. The rotation of names of candidates on ballots shall be as provided by general law.

Precinct Boards of Election

SECTION 177. The registrar shall, at each municipal or special election, prepare lists for and appoint for each election precinct a precinct board of election officers to hold and conduct such election at the precinct for which said board is appointed. Such board shall consist of one inspector, one judge and two clerks, who shall perform all the duties required by law at such polling place, except as in this charter provided. When voting machines are used one inspector and two judges shall be appointed. The general law as to the appointment of election officers shall apply when not otherwise provided herein. The registrar is authorized to withhold the pay of any election officer who neglects, disregards or violates the election laws.

Determining Result of Election—Failure of Persons Elected to Qualify

SECTION 178. The canvass of voters, canvass of returns, declaration of election and certificate of election shall be made as provided by general law. If a person elected fails to qualify, the office shall be filled as in this charter provided for a vacancy in such office.

Initiative, Referendum and Recall

SECTION 179. The registered voters shall have power to propose by petition, and to adopt or to reject at the polls, any ordinance, act or other measure which is within the power conferred upon the board of supervisors to enact, or any legislative act which is within the power conferred upon any other board, commission or officer to adopt, or any amendment to the charter. Such ordinance, act, charter amendment or other measure may be so proposed by filing with the registrar a petition setting forth said measure in full, signed by registered voters of the city and county as many in number as the percentages hereinafter required of the entire vote for all candidates for the office of mayor cast at the last preceding regular municipal election.

Any declaration of policy may be submitted to the electors in the manner provided for the submission of ordinances; and when approved by a majority of the qualified electors voting on said declaration, it shall thereupon be the duty of the board of supervisors to enact an ordinance or ordinances to carry such policies or principles into effect, subject to the referendum provisions of this charter.

Any ordinance which the supervisors are empowered to pass may be submitted to the electors by a majority of the board at a general election or at a special election called for the purpose, said election to be held not less than thirty days from the date of the call. Any such ordinance may be proposed by one-third of the supervisors or by the mayor, and when so proposed shall be submitted to the electors at the next succeeding general election. No ordinance passed by the supervisors granting any public utility franchise or privilege, shall go into effect until the expiration of sixty days from the date it becomes final. At the end of such sixty days such ordinance shall be in force and effect, unless within such period there shall be filed with the registrar a petition signed by registered voters equal in number to five per cent of

the entire vote cast for mayor at the last preceding regular municipal election, requesting that such ordinance be submitted to the electors. In case such petition is filed, such ordinance shall not go into effect until approved by a majority of the voters voting thereon at a general or special election.

If, before the time any other ordinance involving legislative matters becomes effective, there shall be filed with the board of supervisors a petition signed by qualified electors of the city and county equal in number to at least ten per centum of the entire vote cast for all candidates for mayor at the last preceding general municipal election at which a mayor was elected, protesting against the passage of such ordinance the same shall be suspended from going into operation, and it shall be the duty of the board of supervisors to reconsider such ordinance, and if the same be not entirely repealed, said board shall submit the ordinance to the vote of said electors either at the next general municipal election or at a special election to be called for that purpose, and such ordinance shall not go into effect or become operative unless and until a majority of the qualified electors voting thereon shall vote in favor thereof. The provisions of sections 180 and 181 of the charter shall apply to and govern the verification and certification of such petition.

Annual budget and appropriation ordinances, supplemental appropriation ordinances, the annual salary ordinance, or ordinances amending the same, the ordinances levying taxes, any ordinance appropriating money from the emergency reserve fund, ordinances authorizing the city attorney to compromise litigation, and ordinances necessary to enable the mayor to carry out any of the powers vested in him in the case of a public emergency as defined in section 25 of the charter, ordinances enacted pursuant to section 219 of the charter, as well as ordinances relative to purely administrative matters, shall not be subject to referendum.

Any elective official, the chief administrative officer, the controller or any member of the board of education or the public utilities commission may be recalled by the electors. The procedure to effect such recall shall be as follows: A petition demanding the recall from office of the person sought to be recalled shall be filed with the registrar. Said petition shall contain a statement of the grounds on which the recall is sought. Any insufficiency

of form or substance in such statement shall in no wise affect the validity of the election and proceedings held thereunder. No recall petition shall be filed against any officer until he has held his office for at least six months. [*Amended, 1935*]

A salary standardization ordinance is a proper subject for referendum, although this section excludes from referendum those ordinances relative to purely administrative matters, and includes those ordinances involving legislative matters, since the board of supervisors in fixing salaries under § 151 acts in a legislative capacity. **Collins v. San Francisco** (1952) 112 Cal. App. (2d) 719, 247 Pac. (2d) 362.

A salary standardization ordinance, not included by name in the exclusions set forth in this section, is not excluded from the referendum process as "Annual budget and appropriation ordinances, supplemental appropriation ordinances, the annual salary ordinance, or ordinances amending the same." **Collins v. San Francisco** (1952) 112 Cal. App. (2d) 719, 247 Pac. (2d) 362.

The provision of this section that ordinances necessary to enable the mayor to carry out his emergency powers under § 25 shall not be subject to referendum, does not require the passage of any ordinance or resolution to enable him to exercise his emergency powers under § 25. **Mullins v. Henderson** (1946) 75 Cal. App. (2d) 117, 170 Pac. (2d) 118.

Cited in **Brown v. Boyd** (1939) 33 Cal. App. (2d) 416, 91 Pac. (2d) 926.

Petitions

SECTION 180. The filing, verification and certification of initiative, referendum and recall petitions shall be in accordance with general law, and rules and regulations of the registrar of voters relative to details not covered by general law, except as otherwise provided by this charter. Any signer to a petition may withdraw his name from the same by filing with the registrar of voters a verified revocation of his signature before the filing of the petition. No signature can be revoked after the petition has been filed. Unless and until it be proven otherwise by official investigation by the registrar, it shall be presumed that the petition filed conforms to all legal requirements and contains the signatures of the requisite number of registered voters, and after an election based thereon, the sufficiency of such petition shall not be questioned.

If any signature be questioned, the registrar shall mail notice to such purported signer, stating that his or her name is attached to such petition and citing him or her to appear before said registrar forthwith, naming the time and place. Said citation shall enclose a blank affidavit, which may be used to deny that

the affiant signed such petition. If such person does not desire to attend in person, he may swear to such affidavit of denial before any officer authorized to take oaths, and mail the same to the registrar. If he does not so attend and deny such signature in person or by making and mailing such affidavit of denial before the time when the registrar must, under general law, make final determination, the signature to such petition must be treated as genuine. The registrar shall keep a list of the names of all purported signers who appear before him and deny their signature under oath, and also file and keep such affidavits for at least one year.

Special Election Fund

SECTION 181. The board of supervisors, in the first annual budget to be hereafter adopted by said board, shall appropriate not less than fifty thousand dollars to be known as the special election fund, to be used exclusively for defraying the cost of verifying petitions and other expenses of all special elections initiated by petition of the electorate, including recall elections. In the event of the expenditure of any of said fund, the board of supervisors in the next succeeding annual budget shall appropriate a sum sufficient to reimburse said special election fund.

Time of Election

SECTION 182. If the petition accompanying a proposed initiative measure, declaration of policy, or recall be signed by registered voters equal in number to ten per cent of the entire vote cast for mayor at the last preceding general municipal election and contains a request that said measure, policy or recall be submitted forthwith to a vote of the electorate at a special election, then the registrar shall forthwith call a special election, which shall be held at a date not less than thirty nor more than forty days from the date of calling the same, at which said measure or policy, without alteration, or said recall shall be submitted to a vote of the electorate, unless within sixty days of a general or primary election, in which event it shall be submitted at such general or primary election.

If the petition accompanying a proposed initiative measure or declaration of policy be signed by registered voters equal in number to five per cent but less than ten per cent of the said

entire vote, then such measure or measures, without alteration, shall be submitted by the registrar to a vote of the electorate at the next general state or municipal election that shall occur at any time after thirty days from the date of the certificate of sufficiency attached to the petition accompanying such measure unless the board of supervisors, by ordinance, direct that the measure or policy be voted on at a special election prior thereto.

**Measures, Arguments and Statements of Controller Relating to
Costs, to Be Mailed to Voters**

SECTION 183. Whenever any measure is required by this charter to be submitted to the voters of the city and county at any election, the registrar shall cause the measure or policy to be printed on sheets measuring approximately six by nine inches, and shall mail the same with a sample ballot to each voter, at least five days prior to the election. This printed copy may be attached to any other matter required to be printed and mailed.

With or upon the sample ballot mailed to each voter prior to a recall election, there shall be transmitted the reasons for demanding the recall of the officer as set forth in the recall petition, printed in not more than three hundred words, and with or upon the same ballot the printed statement of the officer in not more than three hundred words justifying his course in office.

If the proposition be submitted to the registered voters upon an initiative, referendum or recall petition, the persons filing said petition shall have the right, upon deposit of an amount sufficient to defray the cost of printing as estimated by the registrar, to present to the registrar at any time not later than thirty-five days prior to said election, written arguments favoring their petition, and the registrar shall not accept arguments favoring said petition without the approval of those filing said petition; provided that, as to any proposition to be submitted to the voters at a special election in accordance with section 182 hereof, to be held within thirty-five days of the date of calling such election, such arguments may be presented to the registrar at any time twenty-five days prior to said election. If said proposition be submitted by the mayor or by the board of supervisors, or by one-third of the board of supervisors, they shall have a similar right, but without the making of such deposit, to present arguments. The board of supervisors may also in its discretion, by motion, grant to any pro-

ponents of propositions submitted by the board a similar right, which may be exercised, subject to the approval of such arguments by motion of the board and upon the making of such deposit. Any persons, committee or organization opposing the measure, policy, charter amendment, or recall placed before the voters may present, upon making a deposit as aforementioned, and in like manner and within the same time, written arguments opposing said proposition.

Said arguments shall not contain more than 1800 words, nor exceed four pages in length when printed. They shall be signed by the persons or the presiding or executive officials of the committee or organization presenting them. The registrar shall cause said arguments to be printed in a pamphlet approximately six by nine inches in size in one color of ink and in uniform style. They shall be arranged in numerical or alphabetical order according to the number or letter of the proposition to which they refer, and the affirmative in each case shall precede the negative. The registrar shall charge a uniform fee per page sufficient to cover the cost of printing said pamphlet, returning to depositors any excess of deposits. He shall mail one copy with the sample ballot to each voter.

Immediately after introduction in the board of supervisors, or filing with the clerk thereof, of any measure to be submitted to the voters, or of the filing of a petition of the voters for submission of any proposed amendment of the charter, in accordance with the provisions of Article XI, Section 8, of the Constitution of California, the clerk of the board shall deliver a copy of such proposition to the controller. The controller shall thereupon determine whether, in his opinion, such proposition, if adopted, will increase the cost of government of the city and county or in any way affect its tax rate. The controller shall make a written statement thereon to the board of supervisors, analyzing such proposition as to its cost and effect upon the tax rate. Such statement shall be in form appropriate for mailing to the voters with a sample ballot. Upon vote of submission of any such proposition, which, in the opinion of the controller, will in any way affect the cost of government or the tax rate and as to all propositions to create a bonded debt, the controller shall transmit a copy of such statement in relation thereto to the registrar of voters, who shall mail one copy thereof to each voter with the sample ballot. In the pamphlet of argu-

ments, the position of the statement of the controller shall in each instance be next in order after the negative argument. [*Amended, 1949*]

Form of Ballot—Majority Vote

SECTION 184. The ballots used when voting upon any proposed measure, referendum, policy, recall or confirmation shall contain a general statement thereof, followed by the words "Yes" and "No," so arranged that the voter may indicate his choice upon the ballot. If a majority of the qualified electors voting on said proposed measure, referendum, policy, recall or confirmation shall vote in favor thereof, it shall go into effect ten days after the declaration of the official count. The general statement or question provided for in this section shall be prepared by the city attorney and shall consist of not over thirty words.

If the official proposed to be removed at any recall election shall, as the result of said election, be recalled, the mayor shall appoint his successor for the unexpired term and the officer so recalled shall be ineligible to hold any city and county office for two years; should said officer be retained in his office, he shall be reimbursed out of the special election fund for his expenses in such recall election; provided that such payment shall not exceed the amount he is permitted to spend under the Purity of Elections Act now in force.

Competing and Conflicting Measures—Repeal

SECTION 185. When two or more proposed measures are of the same general purpose, the registrar shall so declare, and shall cause the ballots to be so printed that the voter, first, may choose between any measure or none, and, secondly, may express his preference for any one. If a majority of the votes on the first question is affirmative, then the measure receiving the highest number of votes shall become law and the others fail of passage. In case two or more measures are tied for the highest vote, they shall be resubmitted at the next ensuing general election. If there is a conflict between two or more measures or between two or more charter amendments adopted at the same election, then the measure or charter amendment receiving the highest affirmative vote shall prevail.

No initiative, ordinance or measure or declaration of policy

approved by the electorate under the provision of this charter shall be subject to veto, or be amended or repealed except by vote of the electorate, unless such ordinance or measure shall otherwise provide.

Substantial Compliance

SECTION 186. No informalities in conducting municipal, special, initiative, referendum or recall elections shall invalidate such elections if they have been conducted fairly and in substantial compliance with and conformity to the requirements of this charter.

SAN FRANCISCO - SAN MATEO CONSOLIDATION

Consolidation of San Mateo County

SECTION 187. In the event that all or any part of the area of the County of San Mateo shall be consolidated with the city and county in accordance with law and the constitution of the state, the provisions of sections 187 to 218, inclusive, of this charter shall become effective on the effective date of such consolidation and all other provisions of this charter in conflict with the provisions of said sections shall be thereupon and thereby superseded.

Definitions

SECTION 188. The following terms as used in sections 187 to 218, inclusive, in this charter, to-wit: "city and county," "county," "city," "governmental agency," "consolidate," and "consolidation," unless the context clearly indicates otherwise, shall have the same meanings as in that certain act of the Legislature of the State of California known as the San Francisco-San Mateo Consolidation Act of 1929, approved June 11, 1929. The term "voter" as used in said section means a qualified and registered elector who is a resident of the city, county, city and county, borough, or other territory concerned.

Continuation of Offices, Officers, Employees and Services

SECTION 189. Upon the consolidation of the county as a whole, the offices of assessor, auditor, coroner, county clerk, district attorney, recorder, sheriff, tax collector, and treasurer of said county shall become branch offices of the corresponding respective offices of the city and county, and the incumbents thereof shall become deputies in the said respective offices of the city and county, and shall continue as such to the end of the terms for which they were respectively elected or appointed.

The departments and offices of the city and county shall establish such branch offices in the territory consolidated as shall be necessary or convenient and as directed by the board of supervisors, but with no less amount of service in the said territory than shall have been provided by the county, or any city, or governmental agency of the county just prior to the time consolidation shall become finally effective.

Any full-time incumbent appointive officer or employee of the county, or any city, or governmental agency of the county, who shall have held such office or employment continuously for one year next prior to consolidation and whose duties shall be assumed by the city and county, shall become an employee of the department or office of the city and county assuming said duties and he shall, as such employee, thereafter be subject, without examination, to the civil service provisions of this charter, if any, applying to said employment.

Retirement Rights

SECTION 190. Any policeman or fireman of the county, or any city, or governmental agency of the county, who shall become an employee of the police or fire department of the city and county, and who may participate in any pension or retirement system of the city and county, shall receive credit for his prior continuous full-time service to said county, city or governmental agency.

Municipal Court

SECTION 191. All cases pending in any justices' court, police court or court of any recorder or other judicial municipal magistrate or office of the county, or any city, or governmental agency of the county consolidated with the city and county shall ipso facto be deemed to be and be transferred to the municipal court of the city and county. Such municipal court shall hold regular sessions in such borough or boroughs as the board of supervisors may, by ordinance, direct, and at least one such borough shall be so designated.

Recording

SECTION 192. Any instrument or judgment affecting the title to or the possession of real property situated in the territory of the county which may be consolidated with the city and county must be recorded in the branch office of the recorder of the city and county located in the territory so consolidated and all records in said branch office shall for all purposes be deemed records in the office of the recorder of the city and county.

Establishment of Boroughs

SECTION 193. Any territory included in the area that has become a part of the city and county by consolidation and which at that time is not already within a borough may be organized into a borough in the manner hereinafter set forth, provided such territory contain at least 3,000 population, as determined by ordinance of the board of supervisors. Any incorporated city included in the area that has become a part of the city and county by consolidation, which was such a city on or prior to January 1, 1931, shall automatically become a borough when consolidation becomes effective.

New Boroughs, Consolidation, Change in Boundaries, and Disestablishment of Boroughs

SECTION 194. Any new borough may be established, any two or more boroughs may be consolidated, the boundaries of any borough may be enlarged or diminished, or a borough may be disestablished, provided a majority of the voters of a borough, or boroughs, and/or of the territory concerned, voting on such a proposition at an election called for the purpose, shall first have voted in favor thereof; provided, further, that no borough shall be disestablished nor the boundaries of a borough diminished, unless the same be approved by the board of supervisors by ordinance, or a majority of the voters of the city and county voting thereon at an election called for the purpose, shall first have voted in favor thereof. Such elections shall be called by the board of supervisors upon receiving the report of the borough commission hereinafter provided for, and at any time thereafter upon receiving a petition of at least twenty-five per cent of the voters of the borough or boroughs or the territory concerned. If any petition of voters requests the establishment of a new borough or any change in the boundaries of an existing borough, the supervisors, before calling an election thereunder, must set the petition for public hearing and give notice thereof by publication at least once a week for two weeks in a newspaper published in the city and county. Upon such hearing, the board of supervisors shall have power to change and determine the boundaries as set forth in any such petition. No new borough shall be established, nor shall two or more boroughs be consolidated, nor shall the boundaries of a borough be enlarged or diminished, nor

shall a borough be disestablished, unless a majority of the voters of the borough, or boroughs, or the territory concerned, voting on such a proposition, shall first have voted in favor thereof.

Within thirty days after consolidation is effective, every borough council must appoint one member to a commission to be known as the borough commission. The commission shall be charged with the duty of studying the boundaries of all boroughs within the city and county and of making recommendations to the board of supervisors concerning consolidation, disestablishment, or any change in boundaries of any borough or boroughs. This report shall be submitted to the board of supervisors within two years from the time consolidation shall become effective. Upon receiving the report of the commission, the board of supervisors shall without delay call an election or elections and submit appropriate propositions in accord with the recommendations of the commission to a vote of the voters of the territory concerned.

Upon the consolidation of two or more boroughs, all property thereof shall belong to the consolidated borough and such borough shall become responsible for all the debts and obligations of the boroughs consolidated. Upon a change of boundaries or disestablishment of a borough, the board of supervisors shall provide for the equitable adjustment and payment of any borough debts.

The board of supervisors, by ordinance, shall provide for the method and manner of calling and holding elections provided for in this section and for the canvassing of the returns thereof.

Borough Powers

SECTION 195. Every borough shall have and may exercise, subject to the provisions of this charter, the following powers and duties which shall be exclusive within borough limits except as otherwise provided herein:

(1) To create districts for the purpose of regulating the location, height, area, bulk, and use of buildings, lands and premises, and to exercise zoning and planning powers.

(2) To maintain public libraries and reading rooms.

(3) To maintain parks, playgrounds and other recreational facilities, and to construct and maintain buildings and works appurtenant thereto, except parks, playgrounds and recreational facilities maintained by the city and county.

(4) To construct, improve and maintain streets and the bridges, sidewalks, street signs, lighting fixtures and all other appurtenances incident thereto; except highways maintained by the state or any joint highway district and any highway or street which the board of supervisors shall declare to be a major highway to be maintained by the city and county.

(5) To construct and maintain local sewers, sewage disposal plants, storm drains, and outfalls.

(6) To collect garbage and other wastes and to dispose of the same within or without borough limits, except as the board of supervisors shall otherwise provide for such disposal. Permission to dispose of garbage and other wastes outside of borough limits shall be first obtained from the city and county or the borough having jurisdiction of the territory in which such disposal is made.

(7) To erect, maintain and repair public buildings, and improve and maintain public property within borough limits devoted exclusively to borough uses; provided a borough shall maintain at least one public building, which the borough council shall select and in which the borough council shall meet.

(8) To have and exercise the same power within limits of a borough to open, widen, narrow, or close public streets and highways, and to establish the grades thereof, as is possessed by the city and county, except no borough shall close or narrow any highway maintained by the city and county without the approval of the board of supervisors.

(9) To exercise the powers of eminent domain whenever necessary to acquire property and easements for streets, highways, or other public purposes.

(10) To issue permits for any privilege in or on any street, within the jurisdiction of the borough, and to make regulations with regard to advertising by signs, billboards, banners, placards, posters, or pictures on any street, sidewalk, or private property, or upon any buildings, poles, or fences thereof, except within two hundred feet of any street or highway not under its jurisdiction.

(11) To issue permits for spur tracks.

(12) To establish fire limits for the regulation of building and construction of buildings.

(13) To license for purpose of regulation only such occupations as shall require regulation in the interest of public peace, health, or safety, and to prescribe the terms and conditions under which such licenses shall issue.

(14) To declare what shall constitute a nuisance and to provide for the summary abatement of the same at the expense of the person or persons creating, causing, committing or maintaining such nuisance, by suit or otherwise.

(15) To enact local police ordinances, not inconsistent with the laws of the state or ordinances of the city and county, and to make rules and regulations for the exercise of any power conferred herein on boroughs and to provide penalties for the violation thereof, provided such penalties shall not exceed the penalty limits applicable by law or under this charter to city and county ordinances; such local police ordinances to have all the force and effect within the limits of the borough of an ordinance of the city and county and as though passed and adopted by the board of supervisors.

(16) To create and define the powers and duties of all borough offices and employments, not established by this charter, necessary for the purpose of carrying out the provisions of this charter and executing the powers and duties of a borough; and to fix the compensation of all officers and employees of the borough not fixed by this charter.

(17) To call and hold borough elections whenever necessary.

(18) To levy borough taxes.

(19) To prepare and adopt an annual budget of estimated borough expenditures and to exercise control of all borough funds.

(20) To incur indebtedness for the purpose of carrying out any of the powers conferred on the borough.

(21) To create special districts for the purpose of defraying the cost of any public improvement which the borough is authorized to make, and to levy special assessments upon property materially benefited by such public improvement, and to issue bonds to represent or be secured by such assessments.

(22) To contract for such supplies, services, or labor, and to enter into such contracts as may be necessary.

(23) To employ a qualified person or persons to make an independent audit of borough funds and financial transactions of all kinds as the borough council may direct. If an audit is not made by the city and county, then the borough council shall provide for an audit at least once in every two years.

(24) To accept devises, bequests, legacies, donations or services to or for the use of the borough and to administer the same in accordance with the conditions thereof.

(25) To issue subpoenas for the attendance of witnesses or the production of books or documents for the purpose of producing evidence or testimony in any matter pending before the borough council.

(26) To employ legal counsel.

(27) To change the name of the borough, by ordinance, provided the ordinance making such change in name shall first be approved by a majority of the voters of the borough voting thereon.

(28) To provide, by ordinance, for civil service for borough employees under such conditions as are hereinafter provided, provided such ordinance shall first be approved by a majority of the borough voters voting thereon.

(29) To provide, by ordinance, for a system of retirement allowances for old age and disability and death benefits to dependents, applicable to officers and employees of the borough under conditions hereinafter provided, provided such ordinance shall first be approved by a majority of the borough voters voting thereon.

(30) To appropriate borough funds for supplementing any city and county service or function within the borough; such appropriations to be expended through the appropriate departments of the city and county.

(31) To enter into an agreement with any other borough or boroughs for the joint undertaking of any power conferred on a borough herein.

(32) To have and exercise all appropriate municipal powers which may be necessary or proper to the exercise of the foregoing powers or to the discharge of the foregoing duties, and which are not inconsistent with the other provisions of this charter.

Transfer of Borough Powers

SECTION 196. Any power over which a borough shall have exclusive jurisdiction within its limits, as herein provided, may be transferred to the city and county by a borough by ordinance of the borough council thereof, but not unless a majority of the voters of the borough, voting on the question of the transfer of such power, shall first have voted in favor thereof; provided, that no such power shall be transferred to the city and county unless such transfer is also approved by ordinance of the board of supervisors.

Borough Elective Officers and Terms

SECTION 197. The voters of a borough shall elect five members of the borough council, except as otherwise provided; and also a borough controller, unless a borough shall, by ordinance of the council approved by a majority of the voters thereof voting on such ordinance, vest the powers of borough controller in a borough manager. Except as otherwise provided, borough elective officers shall be elected to serve for terms of four years and until their successors are elected and qualify.

Within fifteen days after the establishment of a new borough created upon petition as herein provided, the mayor of the city and county shall appoint five qualified residents of the borough as members of the council to serve until their successors are elected and qualify. At the next succeeding general borough election, the voters thereof shall elect three members of the council to serve for terms of two years, and two members to serve for terms of four years, beginning at twelve o'clock noon on the 8th day of January following the date of their election.

The council of a borough which by consolidation is automatically established, shall consist of the same number of members as shall compose the council of the city at the time consolidation becomes effective. The city councilmen in office at the time of such consolidation shall continue in office as borough councilmen until the end of the terms for which they were respectively elected, and thereafter until twelve o'clock noon on the 8th day of January of the first succeeding even-numbered year. At the general borough election immediately preceding the expiration of the terms of any such members of a borough council, the voters of the borough shall elect their successors to serve for terms of four

years. At every borough general election the successors to those elective borough officers whose terms are next expiring shall be elected to serve for terms of four years.

At the first meeting of the council, it shall appoint a borough controller to serve until his successor is elected and qualifies. At the next succeeding general borough election, the borough voters shall elect a borough controller to serve for a term of four years, beginning at twelve o'clock noon on the 8th day of January following the date of his election; provided, however, that if a majority of the members of the council are elected at the same time, the borough controller shall be elected to serve for a two-year term, and thereafter his term shall be for four years.

A candidate for any elective borough office shall have been an elector of the borough, or of the area comprising the same, for a period of at least five years prior to the date of election at which he is a candidate. No person who shall hold an elective or appointive office of the city and county shall hold any elective borough office.

A borough council may fill any vacancy in an elective office of a borough for the unexpired term thereof.

Duties, Meetings, and Compensation of Borough Councilmen

SECTION 198. The council shall constitute the legislative body of the borough and, except as otherwise provided, shall exercise the powers thereof.

The council shall provide by ordinance for the time and place of holding its meetings and the manner in which its special meetings may be called, provided, however, that there shall be at least two regular meetings in each month. The first meeting shall be held within thirty days after its establishment at the time and place upon which a majority of the council shall in writing agree upon. All legislative sessions of the council, whether regular or special, shall be open to the public. A majority of all members of the council shall constitute a quorum for the transaction of business. All borough records shall be open to the public.

No member of the borough council shall receive compensation for his services unless an ordinance providing for such compensation shall first have been approved by a majority of the borough voters voting thereon; provided, however, that councilmen of a

borough automatically established shall continue to receive the same compensation as provided for councilmen by the city which it succeeds at the time consolidation becomes effective, until the borough provides otherwise by ordinance approved by a majority vote of the vote cast thereon.

The council shall by ordinance determine what bonds, if any, are to be given by the elective and appointive officers of the borough, and shall fix their amounts and form, and such bonds shall be approved in the case of a borough controller by the council and in the case of all other officers by the borough controller, and the premiums thereon shall be paid by the borough.

Borough President

SECTION 199. The council shall choose one of its own number as president to serve at its pleasure. The president shall be the executive head of the borough upon whom process issued by authority of law shall be served. In the name and on behalf of the borough he shall sign all legal instruments and documents to which the borough is a party except where otherwise provided herein or by ordinance. He shall have such other powers and perform such other duties as may be prescribed by law, or by ordinance or resolution of the council.

Borough Controller

SECTION 200. The borough controller shall have in addition to such duties as are prescribed by this charter, such other duties as may be prescribed by borough ordinance. No borough funds shall be drawn from the treasury of the city and county except by warrant issued or countersigned by him, and he shall countersign no such warrant until he has satisfied himself that the claim is a legal obligation of the borough. He shall keep in his office sufficient and proper records and accounts of the financial transactions of the borough. Such records and accounts shall be kept in the forms and manner as prescribed by the controller of the city and county. He shall have access at all times for himself, or for any person designated by him, to books, records and cash in any office of the city and county and/or of the borough in which accounts are kept or money handled on behalf of the borough. He shall have power to inquire into all contracts, including the performance thereof and into all proceedings involving the ex-

penditure of public funds to which the borough is a party, and into the financial transactions of all officers and employees of the borough. For this purpose he may administer oaths, summon witnesses and order the production of relevant books and papers. If any person fails to obey such summons or order or refuses to answer any proper question, the borough controller may petition a court of competent jurisdiction for an order directing such person to comply with said summons or order or to answer such questions. He shall have power to employ such expert accountants or other agents as he may deem necessary to carry out his powers, and the council shall appropriate such funds as may be needed for this purpose.

Borough Clerk

SECTION 201. When consolidation becomes effective, the clerk of any city which is automatically established as a borough shall continue in office as borough clerk thereof until the expiration of the term for which he may be elected or appointed, and thereafter the council shall appoint a borough clerk who shall act as clerk of the council. He shall have power to administer oaths and affirmations, to take affidavits, and to certify the same. He shall have such other powers and perform such other duties as may be provided by this charter, or by ordinance, or order of the council.

Borough Planning Commission

SECTION 202. The council may provide, by borough ordinance, for a borough planning commission of five members. The ordinance shall provide for the qualifications, manner of appointment, terms, and compensation of the members of such commission, but no compensation shall be paid any member unless the ordinance providing for such compensation shall first have been approved by a majority of the borough voters voting thereon. Said ordinance shall provide that the borough planning commission shall have and exercise within the borough such powers and duties as shall correspond to, so far as possible, the powers and duties of the planning commission of the city and county.

Until a borough planning commission is provided, the council shall have and exercise within the borough such powers and duties of a planning commission as the council, by ordinance, may provide.

The borough planning commission, or the council, as the case may be, shall have such advisory powers relating to any planning matter of the city and county affecting any property, streets, public work or public improvement of or within the borough, as may be provided by ordinance of the board of supervisors.

The borough planning commission, or the council, as the case may be, shall have power to recommend changes in or the repeal of any city ordinance establishing zones for the uses of property within the borough which may be continued in effect upon consolidation. In the determination of which class of occupation zones the property within a borough may be divided, or in the modification of any city zoning ordinance continued in effect, the borough planning commission, or the council, as the case may be, shall accept the classification of occupation zones which the board of supervisors, by ordinance, shall establish for the city and county.

Borough Library Board

SECTION 203. The council may provide, by ordinance, for a borough library board of five members. The ordinance shall provide for the qualifications, manner of appointment, terms and compensation of the members of such board, but no compensation shall be paid to any member unless the ordinance providing for such compensation shall first have been approved by a majority of the borough voters voting thereon.

The borough library board shall have control and management of the borough library and the funds provided for same and shall have power to make such rules and regulations as necessary for the conduct of its affairs, but the treasurer of the city and county shall have custody of such funds.

Borough Manager

SECTION 204. The council may appoint a borough manager, provided, however, that no borough manager shall be appointed unless an ordinance creating such office shall first have been approved by a majority of the borough voters voting thereon, and which ordinance, when so approved, shall not be amended or repealed except by ordinance also approved by a majority of the borough voters voting thereon. The city manager of a city automatically established as a borough shall continue to hold

such office as borough manager until removed by the council, and the council may appoint his successor.

The borough manager shall be chosen by the council without regard to political consideration and solely with reference to his executive and administrative qualifications. Residence within the borough shall not be a qualification for his appointment; but promptly thereafter during his term of office, he shall become and shall remain an actual resident of the borough.

The powers and duties of the borough manager shall be as follows:

- (a) To act as administrative head of the borough government.
- (b) To see that all borough ordinances are enforced.
- (c) To appoint, remove, and have control of all subordinates and employees, except as otherwise provided by this charter or by ordinance of the borough.
- (d) To see that all permits and privileges granted by the borough are observed and to report any violations thereof to the council.
- (e) To attend meetings of the council.
- (f) To advise the council on the needs of the borough.
- (g) To devote his entire time to the interests of the borough.
- (h) To have general supervision of borough parks and playgrounds.
- (i) To appoint such advisory boards as he may deem desirable to advise and assist him in his work; provided such board shall not receive any compensation.
- (j) To prepare the annual budget, as herein provided.
- (k) From time to time, in order to facilitate the prompt, economical and efficient dispatch of borough business, to assign assistants, deputies or employees from any office or department of the government to perform work or service in any other office or department thereof, or to work in more than one of said offices or departments.
- (l) To possess such additional powers and duties as may be provided in this charter or by ordinance.

The borough manager shall have the right to take part in the discussion of all matters coming before the council, but shall have no vote therein.

In case of the absence or disability of the borough manager, the council may designate some qualified person to perform the duties of the office temporarily.

No member of the council shall in any manner, directly or indirectly, by suggestion or otherwise, attempt to influence or coerce the borough manager in making of any appointment or the purchase of supplies, or attempt to exact any promise relative to any appointment from any candidate for borough manager, or discuss, directly or indirectly, with any such candidate the matter of appointments to borough offices or employments. Any violation of the foregoing provisions of this section shall constitute a misdemeanor and shall work a forfeiture of the office of the offending member of the council, who may be removed therefrom by the council or by any court of competent jurisdiction.

No persons related to a borough manager by blood or by marriage shall be eligible for borough employment.

A borough manager may, by written agreement of the councils of the boroughs interested, act as joint manager for two or more boroughs, in which case he shall become a resident of one of the boroughs so interested and shall devote his entire time to the interests of such boroughs.

Borough Legislation

SECTION 205. The council shall act in legislative matters by ordinance only. Other action of the council, unless otherwise provided, may be taken by resolution, motion or order. No ordinance or resolution or order for the expenditure of money shall be passed without receiving the affirmative votes of a majority of all members of the council.

The enacting clause of all borough ordinances shall be as follows: "The people of the Borough of.....(inserting the name of the borough) of the City and County of San Francisco do ordain as follows." No ordinance shall be passed by the council on the day of its introduction, nor within five days thereafter, nor at any time other than a regular meeting. A proposed ordinance may be amended or modified between the time of its introduction and the time of its final passage, providing its general scope and original purpose are retained. All ordinances shall be signed by the president and attested by the borough clerk and

shall be published at least once in some newspaper of general circulation established, printed and published in the borough, and if there be no such newspaper they shall be posted in at least three public places in the borough before becoming effective.

Every ordinance passed by a council shall go into effect at the expiration of thirty days after its final passage, unless otherwise provided in said ordinance and as otherwise provided herein. Ordinances declared by the council to be necessary as emergency measures for the immediate preservation of public peace, health, or safety, containing a statement of the reasons for their urgency, and ordinances ordering or otherwise relating to elections, and ordinances relating to public improvements, the cost of which is to be borne wholly or in part by special assessments, may go into effect at the will of the council.

Borough Fiscal Procedure

SECTION 206. Within the time limits fixed by this charter for the preparation and adoption of the budget of the city and county, every borough shall cause to be prepared and shall adopt a borough budget which shall be a complete statement of the estimate of the revenues and expenditures of the borough departments for the ensuing year. Such budget shall be prepared substantially in the same manner and in such detail as required for the budget of the city and county so far as the same may be applicable. Upon the adoption of the budget, it shall take effect at the same time and shall be binding upon the borough in substantially the same degree and in the same manner as the city and county budget shall be effective and binding upon the city and county.

The fiscal year of a borough shall be the same as for the city and county.

Within the time limits fixed by law or by this charter for the city and county, the borough council may levy a borough tax sufficient to raise the amount estimated to be required in the annual budget as herein provided, less the amounts estimated to be received from fines, licenses, and other sources of revenue; but such levy, exclusive of the tax to pay the interest and maintain the sinking funds of the bonded indebtedness of the borough, and exclusive of special assessment and district taxes and of the library tax, shall not exceed the rate of one dollar on each one hundred dollars of the assessed valuation of the taxable property

within the borough. Should the council fail to fix the tax rate within the time prescribed, then the borough tax rate of the previous year shall constitute the rate of the current year. The council, by ordinance, may provide for a higher tax limit, but such tax limit shall not be effective unless the ordinance fixing such tax limit shall first have been approved by a majority of the borough voters voting thereon.

All borough taxes levied, together with interest thereon and any percentage imposed for delinquency and the cost of collection, which shall be those prescribed in this charter for the city and county, shall constitute liens on the property assessed, which taxes, interest, penalties and charges shall be collected in the same manner as is provided for the collection of city and county taxes and which liens may be foreclosed upon in the same manner as is provided for the foreclosure of liens for city and county taxes.

All borough taxes shall be levied on the valuation of the taxable property within the borough as shall be fixed by the assessor of the city and county for city and county tax purposes.

There shall be a borough fund for each borough. All borough taxes shall be collected by the tax collector of the city and county and shall be paid into the city and county treasury to the credit of the borough concerned, together with all revenues of a borough received from fines, licenses, and other sources of revenue, except as otherwise provided. Money shall be payable from a borough fund only on warrants drawn with the approval of a borough council by such borough officer as the council may authorize, and when countersigned by the borough controller.

The manner and time within which deposits of borough moneys received from taxes, licenses, fees, fines, penalties, forfeitures, and all moneys accruing to a borough from any source shall be made and the transfer and disposition of all surplus funds, shall be provided for by ordinance of the board of supervisors, and shall be uniform for all boroughs.

The council shall not create, audit, or permit to accrue, any debt or liability in excess of the available money in the borough fund of the borough that may be legally apportioned and appropriated for such purpose; provided that taxes levied though uncollected are deemed available income and revenue for the year for which levied; and provided, that any borough, during the first year of its existence, may incur such indebtedness or liability

as may be necessary, not exceeding in all the income and revenue provided for it in such year, nor shall any warrant be drawn, or evidence of indebtedness be issued, unless there be at the time sufficient money in the borough fund legally applicable to the payment of the same, except as hereinafter provided. When any order or demand is presented to the borough controller for approval and is not approved for want of funds and the amount of said order or demand does not exceed the income and revenue for the year in which the indebtedness was incurred, such borough controller must endorse thereon the words, "not approved for want of funds," with the date of presentation and shall, in attestation thereof, affix his signature thereto; and shall number such indorsement and shall register said order or demand in the records of his office and shall thereupon deliver said order or demand to the claimant, or his order. From that time, such order or demand shall bear interest at the rate of six per cent per annum. Such orders or demands, so registered as herein provided, shall be paid in the order in which the same are registered.

All license taxes collected by the city and county within the limits of any borough shall be credited to the borough fund of such borough by the treasurer of the city and county.

Borough Tax Subventions

SECTION 207. For those boroughs which shall within their own boundaries perform municipal functions concerned with the maintenance of streets, sewers, parks, libraries, and playgrounds, which would otherwise be the municipal obligation of the city and county, the board of supervisors shall by ordinance provide for a system of subventions to such boroughs from tax funds of the city and county, provided that in no event shall such subvention to any borough in any one fiscal year either exceed the amount which such borough shall appropriate out of borough funds in that year for such municipal functions, or exceed the amount which the city and county shall raise in that year by city and county taxes for similar municipal purposes of the city and county upon the assessed valuation of taxable property within such borough. Such system of subventions may be modified from time to time by the board of supervisors by ordinance, but all ordinances providing for such a system shall apply generally to all boroughs.

Borough Bonded Indebtedness

SECTION 208. A borough may incur an indebtedness, exceeding in any year the income and revenue provided for such year, for the purposes of paying the cost of any borough improvement or acquisition within the power of the borough to make or acquire and may issue and sell borough bonds for such purposes, provided said indebtedness and bonds are authorized as herein provided by ordinance or resolution of the borough pledging the faith and credit of the borough therefor. Such ordinance or resolution shall be adopted and the proposition for the issue and sale of such bonds shall be submitted to a vote of the voters of the borough in substantially the same form and manner and according to the same procedure as is provided in this charter for the issue and sale of bonds by the city and county, or in the manner and form and according to the procedure provided in any general law of the State of California in force at the time governing the issue and sale of bonds by municipalities, so far as the same may be applicable.

No such debt shall be incurred and no such bonds shall be issued by any borough without the assent of two-thirds of the voters thereof voting thereon at an election to be held for that purpose, nor unless before or at the time of incurring said debt or issuing said bonds provision shall be made for the collection of an annual tax sufficient to pay the interest on such debt or bonds as it falls due and provision shall also be made to constitute a sinking fund for the payment of the principal thereof on or before maturity.

In no case shall borough bonds be issued for a term which shall exceed the estimated life of the work or improvement for the payment of which they are issued as certified by the council in the ordinance calling the bond election, nor for a term to exceed forty years.

No bond shall be issued on the faith and credit of the borough which will increase the bonded indebtedness thereof beyond five per cent of the assessed valuation of the property within the borough subject to direct taxation as shown by the last preceding assessed valuation.

The proceeds from the sale of borough bonds shall be applied exclusively to the purposes and objects to which the voters of

the borough have assented, until such purposes and objects have been accomplished, after which the surplus, if any, shall be transferred to the bond interest or redemption fund of the borough.

Borough bonds shall not constitute a debt or general obligation of the city and county.

Borough Special Assessments

SECTION 209. In the exercise of its power to provide for the payment of the cost of any public improvement in whole or in part by special assessment levied against the property benefited thereby, a borough acting through its council may establish local improvement districts and levy and collect special assessments and reassessments to pay the costs and expenses of such improvements, which expenses shall be made and assessments levied and collected in conformity with the procedure set forth in this charter for the city and county, or with the procedure set forth in any ordinance passed or adopted thereunder, or with the procedure set forth in any one or more of the general laws of the State of California in force at the time of the improvement relating to the doing of public work or the making of public improvements in municipalities or in counties, so far as the same may be applicable. The council may provide in accordance with the procedure set forth in said charter or said ordinance or general law or laws for the issuance, sale, payment and redemption of interest bearing bonds to represent or to be secured by such assessments or any reassessments remaining unpaid after a certain period, either singly or in the aggregate, and may provide that such assessments or reassessments may be paid in installments and be collected in the same manner in which city and county taxes are collected or otherwise, and for the sale of lands burdened by such assessments or reassessments and for the purchase of same on behalf of the borough in event of nonpayment, and may provide other alternative methods for such collection by foreclosure or otherwise. Such work or improvements are any permitted to be done by boroughs under this charter or by the city and county or by any such procedure, ordinance or general law.

Nothing contained herein shall prevent the board of supervisors from establishing similar local improvement districts where the same shall cover territory in two or more boroughs or parts

thereof, or cover territory lying partly within and partly without a borough, or from levying and collecting special assessments and reassessments to pay the cost and expenses of such local public improvements.

Borough Contracts and Official Advertising

SECTION 210. In the preparation of estimates, calling for bids, advertising, and awarding of contracts for supplies, materials, labor, official advertising, or for any public work, a borough shall be subject to the provisions of any ordinance as the board of supervisors shall provide to be applicable uniformly to all boroughs. Such ordinance shall follow as closely as practicable the provisions of this charter relating to such matters applicable to the city and county and shall charge borough officers with appropriate duties in the premises.

Contracts for the official advertising of a borough shall be let as this charter provides for the letting of contracts for official advertising of the city and county, provided that any such contract shall be let to a daily or weekly newspaper of general circulation established, printed, and published in the borough, if any such there be. If there be no such newspaper, then such contract shall be let to a daily or weekly newspaper of general circulation established, printed and published in the city and county.

Any newspaper of general circulation which for one year next prior to consolidation was established, printed and published in the territory consolidated with the city and county shall thereafter be deemed to have been so established, printed and published as a newspaper of general circulation for said period of one year within said city and county for all purposes of official publication or advertising.

The advertising of the delinquent borough tax list of the property within a borough shall be let by the board of supervisors to the lowest responsible bidder for publication in a newspaper of general circulation printed and published within such borough, if any such there be, and otherwise in such a newspaper printed and published in the city and county and such delinquent tax list shall be published in such newspaper at least once.

Interest in Borough Contracts

SECTION 211. No officer or employee of a borough shall be or become directly or indirectly interested in any contract of such borough. Any such officer or employee violating the provisions of this section shall forfeit his office or place of employment and be disqualified from being elected, appointed or employed in the service of such borough, or the city and county, or any other borough thereof, and such contract shall be void.

Borough Civil Service

SECTION 212. Whenever the voters of a borough shall approve an ordinance of the council providing for civil service for officers and employees of the borough, the council shall enter into an agreement with the civil service commission of the city and county for the administration of the civil service system of the borough, and it shall provide in the borough budget for the payment to the city and county of the costs of such services.

In any such ordinance it shall be provided that all borough officers and employees, not otherwise exempt as herein provided, shall be subject to the civil service provisions of this charter as far as they may be consistently applicable to such officers and employees. Such ordinance shall further provide that there shall be no exemption of any borough officers or employees from the borough civil service system except in the case of elective borough officers, appointees to any borough board or commission not required to give full-time service, and the borough manager, if any. Such ordinance may also provide that any borough officer or employee, who shall be subject to the borough civil service system and who has been continuously employed full-time for one year prior thereto by the borough or by the city automatically established as such borough, shall without any examination be deemed appointed within the civil service provisions of this charter to the position to which he may be assigned and entitled to all the benefits of said civil service provisions thereafter.

Borough Pensions

SECTION 213. Whenever the voters of a borough shall approve an ordinance of the council providing for retirement allowances and death benefits applicable to officers and employees of the borough, the council shall enter into an agreement with the retire-

ment board of the city and county for the administration of the borough retirement allowances and death benefits, and for contributions by the borough and the borough officers and employees to the retirement system of the city and county in like manner as is provided for such administration and contributions by the city and county and city and county officers and employees.

The right of borough officers and employees to participate in such a retirement system, the manner in which they may participate, and the benefits they may enjoy, shall be those provided by the retirement system for officers and employees of the city and county.

In any such borough ordinance it may be provided that any officer or employee participating in its benefits shall receive credit for his prior continuous full-time service to the borough and/or to the city automatically established as such borough, and all liabilities accruing under such system because of such prior service shall be met by the borough.

Borough Elections

SECTION 214. The primary and general elections of a borough shall be held at the time provided in this charter for municipal primary and general elections of the city and county. Except as otherwise provided in this charter, the council by ordinance shall call any special borough election and notice of such special election shall be given by proclamation issued by the president of the council and posted and published as the council may direct for the period of at least thirty days next preceding the date of such election. Any borough election shall be conducted and canvassed in the same manner as an election of the city and county, but the cost of any special election shall be borne by the borough. A borough special election may be called to be held on any day appointed for any primary or general election of the city and county.

Borough Initiative, Referendum and Recall

SECTION 215. The voters of a borough may invoke the initiative provisions of this charter to apply to any borough ordinance, and they may also invoke the referendum provisions of this charter to apply to any ordinance, act or measure of a borough council. The council may submit any ordinance it is empowered to pass

to a vote of the borough voters. The voters of a borough may invoke the recall provisions of this charter to apply to any elective borough officer. It shall be the duty of the board of supervisors, by ordinance uniformly applicable to all boroughs, to make the provisions of this section effective.

Interchange of Services

SECTION 216. Any department, officer, or employee of a borough may be permitted to perform services for any department or office of the city and county, and may be compensated for such services by the city and county, provided approval thereof is first obtained from the proper borough authority.

Borough Continuation of Employees, Contracts, and Ordinances

SECTION 217. Except as otherwise provided, any employee of a city consolidated with the city and county, who shall be in the employ of any department or office of such city, the power over which shall be conferred upon a borough automatically established as successor to any such city, shall continue in the position to which he may be assigned in the employ of the borough until the end of his term or if without a term until removed by the authority to whom power of removal is committed.

All contracts for materials, supplies and labor, and all public works, special assessments or similar proceedings entered into or undertaken by a city consolidated with the city and county in force or in course of performance when consolidation becomes effective, shall be continued and perfected by the borough automatically succeeding any such city, provided the borough shall have jurisdiction in the matter for which such contracts were entered into or over such public works, special assessment or similar proceedings, and otherwise by the city and county.

All ordinances of a city consolidated with the city and county which are not inconsistent with the provisions of this charter or with any ordinance of the city and county shall, until repealed or amended by borough ordinances, be continued in force as ordinances of the borough automatically succeeding such city.

General Legislation for Boroughs

SECTION 218. The board of supervisors shall have general power to enact all legislation necessary to permit boroughs to

exercise their powers or perform their duties under any provisions of this charter and not otherwise provided for herein. Such legislation shall be consistent with the provisions of this charter relating to the city and county or to boroughs and shall be uniform for all boroughs.

MISCELLANEOUS

Per Diem and Mileage

SECTION 219. Except in the discharge of routine duties, traveling and payment of expenses therefor shall be authorized only by ordinance; provided, that allowances therefor shall not exceed cost of transportation, including Pullman charges, if any, and a reasonable amount per diem for necessary expenses, which per diem shall be fixed annually by ordinance and shall be applicable to all officers and employees.

Cited in **Powell v. San Francisco** (1944) 62 Cal. App. (2d) 291, 144 Pac. (2d) 617.

Office Hours

SECTION 220. Except where otherwise provided by law, all public offices shall be open for business every day, except legal holidays, from eight-thirty o'clock A.M., until five o'clock P.M. The supervisors by ordinance may provide that any office shall be kept open for a longer time, when necessary for the accommodation of the public, and may also provide by ordinance that any office shall be closed on Saturday of each week during all or any part of the year. [*Amended, 1951*]

Civil Service Exemptions

SECTION 221. References throughout this charter to the exclusion or the exemption from the civil service provisions of this charter shall be construed to mean, exclusive of those civil service provisions that relate to examination, appointment and removal.

Prohibited Practices of Officers and Employees

SECTION 222. No member of any board or commission shall accept any employment relating to the business or the affairs of any person, firm or corporation which are subject to regulation by the board or commission of which he is a member. No supervisor and no officer or employee of the city and county, shall be or become, directly or indirectly, interested in, or in the performance of, any contract, work, or business, or in the sale of any article, the expense, price or consideration of which is payable from the treasury; or in the purchase or lease of any real estate

or other property belonging to, or taken by, the city and county, or which shall be sold for taxes and assessments, or by virtue of legal process at the suit of the city and county; nor shall any person in this section designated during the time for which he was elected or appointed, acquire an interest in any contract with, or work done for, the city and county, or any department or officer thereof, or in any franchise, right or privilege granted by the city and county, unless the same shall be devolved upon him by law; nor shall any person mentioned in this section give or promise any money or other valuable thing, or any portion of his compensation, in consideration of his nomination, appointment, or election to any city and county office or employment; or accept any donation or gratuity in money or other valuable thing, either directly or indirectly, from any subordinate or employee or from any candidate or applicant for a position as employee or subordinate under him.

No supervisor and no officer or employee of the city and county shall engage in any activity, employment or business or professional work or enterprise which is inconsistent, incompatible, or in conflict with his duties as a supervisor or officer or employee of the city and county or with the duties, functions and responsibilities of his appointing power, or the department, office or agency by which he is employed, or the board or commission of which he is a member.

The civil service commission with respect to officers and employees whose positions are subject to the civil service provisions of the charter other than officers and members of the fire and police departments, the fire commission with respect to officers and members of the fire department and the police commission with respect to officers and members of the police department, are each empowered to prescribe and enforce such reasonable rules and regulations as each commission deems necessary to effectuate the purposes and intent of this section. Such rules and regulations may provide for restrictions against activities, employments and enterprises other than those described or mentioned herein when such restrictions are found necessary for the preservation of the honor or efficiency of the city and county civil service or for the protection of the best interests of the city and county service in any respect.

Violation of any of the provisions of this section shall constitute official misconduct or cause for dismissal and shall subject the violator to the proceedings and penalties provided therefor in the charter. [*Amended, 1957*]

Participation in Contracts — Remote Interests

SECTION 222.1. A supervisor, officer or employee shall not be deemed interested in or in the performance of any contract, work, business, or the sale of any article, the expense, price or consideration of which is payable from the treasury, within the meaning of section 222, unless such contract, work, business or sale is awarded, entered into, or authorized by him in his capacity as supervisor, officer or employee, or by an officer or employee under his supervision and control, or by a board or commission of which he is a member.

A supervisor or officer of the city and county shall not be deemed interested in any such contract, work, business or sale awarded, entered into or authorized by a board or commission of which he is a member if he has only a remote interest therein and the fact of such interest is disclosed to the board or commission of which he is a member and noted in its official records and the board or commission authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the supervisor, officer or member with the remote interest, unless the contract must be awarded to the highest or lowest responsible bidder as the case may be on a particular day and the vote of such supervisor, officer or member is necessary to a quorum on that day.

As used in this section "remote interest" means:

(1) The ownership of less than five per cent of the shares of a corporation for profit;

(2) That of a nonsalaried officer of a nonprofit corporation;

(3) That of an officer in being reimbursed for his actual and necessary expenses incurred in the performance of official duty;

(4) That of an employee of the contracting party having ten or more other employees; provided, that the supervisor or officer was an employee of said contracting party for at least three years prior to his initially accepting such office;

(5) That of a parent in the earnings of his minor child for personal services;

(6) That of a landlord or tenant of the contracting party;

(7) That of an attorney of the contracting party; or

(8) Except as to supervisors, such other interest or relationship other than those set forth in (1) to (7) above as may hereafter be designated by a vote of two thirds of the members of the board of supervisors.

All contracts, work, business or sales herein mentioned heretofore awarded, entered into or authorized by any board or commission of the City and County of San Francisco in which a supervisor, officer or member had a remote interest as hereinabove defined are hereby ratified and confirmed.

The provisions of this section shall not be applicable to any supervisor, officer or employee who influences or attempts to influence the award, execution or authorization of any contract, work, business or sale, the expense, price or consideration of which is payable from the treasury, in which he has a direct or indirect interest. [*New section, 1960*]

Penalty for Official Misconduct

SECTION 223. Any person found guilty of official misconduct shall forfeit his office, and shall be forever after debarred and disqualified from being elected, appointed or employed in the service of the city and county.

Publication

SECTION 224. Whenever advertising or publication is required by the provisions of this charter, it shall mean one publication in the official newspaper of the city and county, unless a greater number of publications is specifically required; provided that notices inviting bids shall be published for at least three consecutive days, except as provided in section 95 of this charter.

Headings and Captions

SECTION 225. Headings and captions used in this charter, whether the same occur between sections or immediately preceding section numbers, are hereby declared to be for no other purpose than the convenient indication of the general subject

matter of the provisions which follow, and they shall not be considered or construed in connection with the text of this charter in any way so as to alter or modify the meaning or intent of the provisions of this charter, as such meaning or intent would be determined if such headings and captions were not used.

Constitutionality

SECTION 226. If any section, subsection, or subdivision, sentence, clause or phrase of this charter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portion or portions of this charter. The people of the City and County of San Francisco hereby declare that they would have ratified and adopted, and the Legislature hereby declares that it would have approved, this charter, and each section, subsection or subdivision, sentence, clause and phrase hereof as the charter of the City and County of San Francisco, irrespective of the fact that any one or more other sections, subsections or subdivisions, sentences, clauses or phrases be declared unconstitutional.

CHARTER RATIFICATION AND EFFECTIVE DATE

Schedule—Effective Date of Charter

This charter shall take effect at twelve o'clock noon on the 8th day of January, 1932, except as otherwise specifically provided in this charter; provided, however, that offices which, under the charter superseded by this charter, shall have been filled by vote of the electors of the city and county, and which, by this charter, are made appointive offices shall not be filled by vote of the electors at the general municipal election of 1931. Upon its approval by the Legislature of the State of California, this charter shall take effect as herein provided and shall supersede the charter of the said city and county in force at the time immediately preceding such approval.

INITIATIVE ORDINANCES

REFUSE COLLECTION AND DISPOSAL ORDINANCE

Adopted November 8, 1932

Providing for the Collection and Disposition of Refuse in the City and County of San Francisco; Providing for the Licensing of Refuse Collectors by the Director of Public Health; Fixing the Maximum Rates or Charges for the Collection of Refuse by Licensed Refuse Collectors from Homes, Apartment Houses, Stores, etc.; Dividing City and County of San Francisco into Collection Routes; Providing Penalties for the Violation of the Provisions of this Ordinance.

Be it Ordained by the People of the City and County of San Francisco:

SECTION 1. The term "refuse" as used in this ordinance shall be taken to mean all waste and discarded materials from dwelling places, households, apartment houses, stores, office buildings, restaurants, hotels, institutions and all commercial establishments, including waste or discarded food, animal and vegetable matter from all kitchens thereof, waste paper, cans, glass, ashes, and boxes and cuttings from trees, lawns and gardens.

SECTION 2. It shall be unlawful for any person, firm or corporation to dispose of refuse as defined in this ordinance except as herein provided, save that the provisions of this ordinance shall not include refuse which may be incinerated by an owner of a building for himself or for his tenants on the premises where produced; provided, however, that such incineration shall be subject to inspection and control by the Director of Public Health and the Fire Department. Failure of any householder producing refuse to subscribe to and pay for refuse collection, unless such householder is a tenant for whom refuse collection service is provided by his landlord, shall be prima facie evidence that such householder is disposing of refuse in violation of this ordinance.

SECTION 3. Refuse consisting of waste or discarded food, animal and vegetable matter, discarded containers of food, animal and vegetable matter and ashes shall be collected and placed in suitable metal cans of such capacity as the Director of Public Works may prescribe (but not to exceed 32 gallons in the case of a can serving one single family dwelling unit) by the producer or landlord who by reason of contract or lease with an occupant is

APPENDIX A

obligated to care for such refuse, for collection by a refuse collector to be disposed of as herein provided. Waste paper and boxes and other refuse materials not subject to putrefaction or decay, and cuttings from trees, lawns and gardens may be placed in any suitable container and delivered by the producer or landlord, who by reason of contract or lease with the occupant is obligated to care for such refuse and deliver same to a refuse collector, to be disposed of as herein provided; provided, however, that it shall be optional with the producer or landlord to deliver waste paper or other refuse having a commercial value to a refuse collector, and the producer or landlord may dispose of the same in any manner he may see fit. Refuse which under the provisions hereof must be deposited in a metal can of suitable capacity shall be removed daily from the place where the same is created.

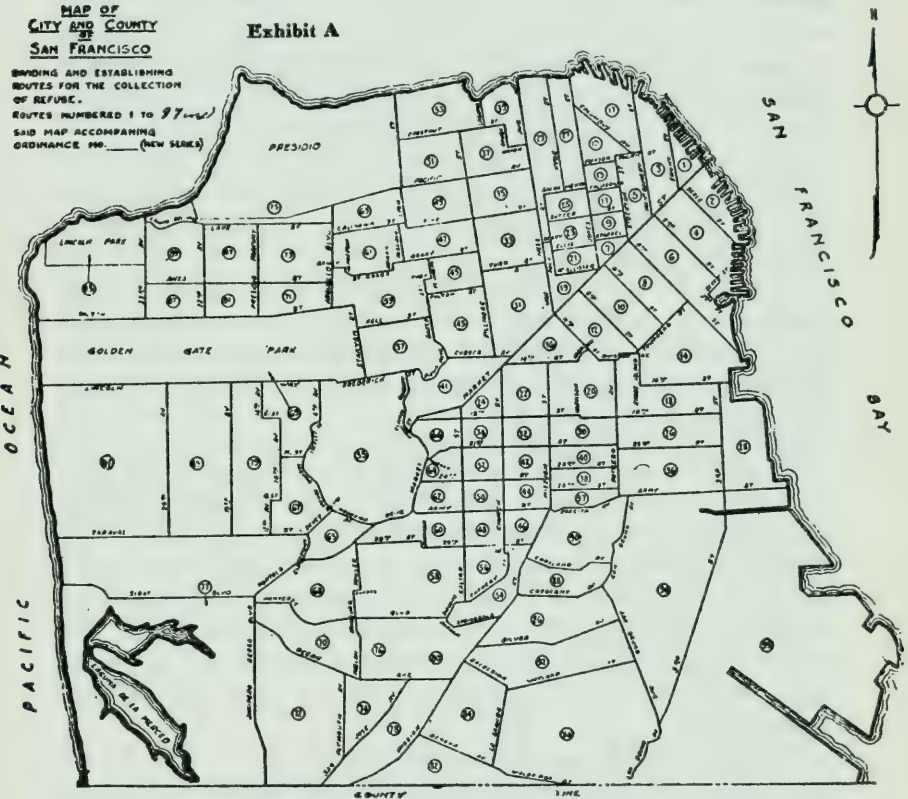
SECTION 4. It shall be unlawful for any person, firm or corporation, other than a refuse collector licensed by the Director of Public Health as in this ordinance provided, to transport through the streets of the City and County of San Francisco any refuse as in this ordinance defined, or to collect or to dispose of the same, except waste paper, or other refuse having a commercial value. It is provided, however, that a license for a refuse collector, as provided in Section 8 hereof, shall be distinguished from a permit to operate, in the City and County of San Francisco on a certain designated route, as hereinafter provided.

Upon the conviction of any person, firm or corporation for any violation of the provisions of this ordinance, the permit of such person, firm or corporation issued under the provisions of this ordinance, shall be forthwith and immediately terminated and canceled as of the date of conviction.

The City and County of San Francisco is herewith divided and established into routes for the collection of refuse, as designated on a map of the City and County of San Francisco, attached hereto, each said route to include only the side of the street or streets bounding each route as designated by a number on said map, said routes being numbered one to ninety-seven, inclusive, and said map and said routes are marked Exhibit A, and attached hereto and made a part of this ordinance.

Any person, firm or corporation desiring to transport through the streets of the City and County of San Francisco, any refuse

as herein defined, or to collect or dispose of the same, shall make application to the Director of Public Health for permission so to do. Said application for such permit shall contain the name of the person, firm or corporation, any of the particular route or routes, designated in said map of routes, proposed to be served by said person, firm or corporation, and a statement that said person, firm or corporation will abide by all the provisions of this ordinance, and will not charge a greater rate for the collection and disposition of said refuse than that fixed in or pursuant to this ordinance.



MAP OF THE CITY AND COUNTY OF SAN FRANCISCO

The Director of Public Health shall grant a permit to such applicant unless the route proposed is already adequately served by a licensed refuse collector. An application for a permit must be granted, however, by the said Director of Public Health, and it is mandatory on said director to grant the same, when it shall

APPENDIX A

appear in any said application for a route or routes by a person, firm or corporation, that twenty per cent or more of the householders, business men, apartment house owners, hotel keepers, institutions or residents in said route or routes, using refuse service, and paying for same, or obligated to do so, have signed a petition or contract in which they have stated that they are inadequately served by any refuse collector who is then collecting refuse on said route, provided that said director finds upon substantial evidence that such statement is correct. That inadequate service is hereby defined as the failure, on the part of any refuse collector to properly collect, handle or transport refuse on said route, or the overcharging for the collection of same, or insolence towards persons whose refuse has been collected, or the collection by any refuse collector whose license has been revoked as provided in Section 9 hereof. Such permit so granted by the Director of Public Health shall not be exclusive, however, and one or more persons, firms or corporations may be given a permit to collect on the same route.

Persons, firms or corporations desiring to transport through the streets of the City and County of San Francisco only waste paper or other refuse having a commercial value, and to collect and dispose of same need not obtain a permit therefor under the provisions of this ordinance.

SECTION 5. All refuse collected by any refuse collector shall be incinerated at the San Francisco incinerator, located in the block bounded by Alameda, Fifteenth, Rhode Island and DeHaro streets, or at some other incinerator, hereafter designated by the board of supervisors of the City and County of San Francisco, or shall be disposed of by any other method designated by the board of supervisors, except dumping at sea. It is provided, however, that metals may be melted at places other than at said incinerator.

That said incinerator shall be placed under the control of some person, firm or corporation designated by the board of supervisors and said person, firm or corporation, shall incinerate in said incinerator all refuse received, as herein provided, or the Board of Supervisors may provide for the disposition of refuse by any other means, except dumping at sea, as provided by law or ordinance of the City and County of San Francisco, and said person, firm or corporation incinerating, or otherwise disposing of said

refuse as herein provided, may charge the refuse collector for such disposition, a charge may be agreed upon between the refuse collector and said person, firm or corporation for so disposing of said refuse. Provided, however, that if such charge cannot be agreed upon, such charge shall be fixed and determined by the Board of Supervisors, but in no event shall the charge exceed the maximum of one dollar and fifty cents per ton. Should any dispute arise between the refuse collector and the person, firm or corporation having control of said incinerator, or other disposition of refuse, as provided for by law, concerning the amount of such charge, pending the determination thereof by the Board of Supervisors as herein provided, the person, firm or corporation having charge and control of said incinerator or other disposition of said refuse, shall continue such disposition until the matter of such charge will have been determined by the Board of Supervisors, and upon such determination, the refuse collector shall pay to the said person, firm or corporation the amount fixed by said person, firm or corporation in charge of said incinerator for all refuse incinerated or otherwise disposed of pending said dispute.

SECTION 6. (a) Until and unless changed in the manner hereinafter set forth, the maximum rates or charges for the collection and disposition of refuse as herein defined, by refuse collectors, from residences, flats and apartment houses of not more than 600 rooms, and the regulations relating to such rates or charges, shall be as follows:

Rate Schedules

Monthly rates from residences and flats for one container of not exceeding thirty-two gallons. Made from the ground floor:

Collections Per Week

<i>No. Rooms</i>	<i>1.</i>	<i>2.</i>	<i>3.</i>	<i>4.</i>
1 to 4	\$.80	\$1.20	\$1.35	\$1.50
5 .....	.85	1.25	1.40	1.55
6 .....	.85	1.25	1.40	1.55
7 .....	.95	1.35	1.50	1.70
8	1.00	1.50	1.70	1.80
9	1.00	1.50	1.70	1.80
10	1.00	1.50	1.70	1.80
11	1.00	1.50	1.70	1.80
12	1.00	1.50	1.70	1.80

APPENDIX A

Monthly rates from residences and flats for one container of not exceeding thirty-two gallons. Made from second floor, one stairway above ground floor or basement:

<i>No. Rooms</i>	<i>Collections Per Week</i>			
	<i>1.</i>	<i>2.</i>	<i>3.</i>	<i>4.</i>
1 to 4	\$.85	\$1.25	\$1.40	\$1.55
5 .....	.95	1.35	1.45	1.60
6 .....	.95	1.35	1.45	1.60
7	1.00	1.40	1.55	1.75
8	1.10	1.60	1.80	1.90
9	1.10	1.60	1.80	1.90
10	1.10	1.60	1.80	1.90
11	1.10	1.60	1.80	1.90
12	1.10	1.60	1.80	1.90

Monthly rates from residences and flats for one container of not exceeding thirty-two gallons. Made from third floor, two stairways above ground floor or basement:

<i>No. Rooms</i>	<i>Collections Per Week</i>			
	<i>1.</i>	<i>2.</i>	<i>3.</i>	<i>4.</i>
1 to 4	\$.90	\$1.30	\$1.45	\$1.60
5 .....	.95	1.35	1.50	1.65
6 .....	.95	1.35	1.50	1.65
7	1.10	1.55	1.70	1.80
8	1.15	1.70	1.90	2.00
9	1.25	1.75	1.95	2.10
10	1.25	1.75	1.95	2.10
11	1.25	1.75	1.95	2.10
12	1.25	1.75	1.95	2.10

Monthly rates from residences and flats for one container of not exceeding thirty-two gallons. Made from fourth floor, three stairways above ground floor or basement:

<i>No. Rooms</i>	<i>Collections Per Week</i>			
	<i>1.</i>	<i>2.</i>	<i>3.</i>	<i>4.</i>
1 to 4	\$1.00	\$1.40	\$1.55	\$1.70
5	1.10	1.50	1.65	1.80
6	1.10	1.50	1.65	1.80
7	1.20	1.60	1.75	1.90
8	1.20	1.70	1.90	2.05
9	1.25	1.75	1.95	2.10
10	1.25	2.00	2.20	2.40
11	1.25	2.00	2.20	2.40
12	1.25	2.00	2.20	2.40

Monthly rates from apartment houses:

<i>No. Rooms</i>	<i>Collections Per Week</i>				
	<i>6.</i>	<i>4.</i>	<i>3.</i>	<i>2.</i>	<i>1.</i>
10	\$ 3.00	\$ 2.40	\$2.20	\$1.90	\$1.80
20	5.70	4.90	4.40	3.90	3.70
30	7.90	6.40	5.90	5.20	-----
40	9.80	8.70	7.40	-----	-----
50	11.30	10.20	8.70	-----	-----
60	12.50	11.50	-----	-----	-----
70	13.80	12.90	-----	-----	-----
80	15.00	14.00	-----	-----	-----
90	16.30	15.20	-----	-----	-----
100	17.50	16.20	-----	-----	-----
110	19.00	-----	-----	-----	-----
120	20.40	-----	-----	-----	-----
130	21.80	-----	-----	-----	-----
140	23.20	-----	-----	-----	-----
150	24.50	-----	-----	-----	-----
160	25.90	-----	-----	-----	-----
170	27.30	-----	-----	-----	-----

APPENDIX A

<i>No. Rooms</i>	<i>Collections Per Week</i>				
	6.	4.	3.	2.	1.
180	\$28.70	\$.....	\$.....	\$.....	\$.....
190	30.00	.....	.....	.....	.....
200	31.40	.....	.....	.....	.....
210	32.50	.....	.....	.....	.....
220	33.80	.....	.....	.....	.....
230	35.00	.....	.....	.....	.....
240	36.30	.....	.....	.....	.....
250	37.50	.....	.....	.....	.....
260	38.80	.....	.....	.....	.....
270	40.00	.....	.....	.....	.....
280	41.30	.....	.....	.....	.....
290	43.80	.....	.....	.....	.....
300	45.00	.....	.....	.....	.....
310	46.30	.....	.....	.....	.....
320	47.50	.....	.....	.....	.....
330	48.80	.....	.....	.....	.....
340	50.00	.....	.....	.....	.....
350	51.30	.....	.....	.....	.....
360	52.50	.....	.....	.....	.....
370	53.80	.....	.....	.....	.....
380	56.30	.....	.....	.....	.....
390	57.50	.....	.....	.....	.....
400	58.80	.....	.....	.....	.....
410	59.00	.....	.....	.....	.....
420	60.40	.....	.....	.....	.....
430	61.80	.....	.....	.....	.....
440	63.20	.....	.....	.....	.....
450	64.50	.....	.....	.....	.....
460	65.90	.....	.....	.....	.....
470	67.30	.....	.....	.....	.....
480	68.70	.....	.....	.....	.....
490	70.00	.....	.....	.....	.....
500	71.40	.....	.....	.....	.....
510	72.80	.....	.....	.....	.....

<i>No. Rooms</i>		<i>Collections Per Week</i>				
		6.	4.	3.	2.	1.
520	74.20	\$.....	\$.....	\$.....	\$.....	\$.....
530	75.50	.....	.....	.....	.....	.....
540	76.90	.....	.....	.....	.....	.....
550	78.30	.....	.....	.....	.....	.....
560	79.70	.....	.....	.....	.....	.....
570	82.30	.....	.....	.....	.....	.....
580	82.40	.....	.....	.....	.....	.....
590	83.80	.....	.....	.....	.....	.....
600	85.00	.....	.....	.....	.....	.....

Rate Regulations

Rates for residences and flats shall be increased for more than one container of a maximum of thirty-two gallons by 10 cents per additional container per collection.

Any charge made by a refuse collector for removal of waste material not required to be placed in metal cans and which is delivered to him in other suitable containers as provided by section 3 hereof shall not exceed the rates fixed herein for collection and disposal of equivalent volumes of refuse in metal cans.

In determining the number of rooms or any household, building or apartment in order to ascertain the rate for the collection and disposition of refuse therefrom, halls, alcoves, storerooms, bathrooms, closets and toilets shall not be considered as rooms, nor shall basements or attics be considered as rooms unless the same be occupied as living quarters.

Any collection and disposition charges not specifically set forth herein shall be subject to agreement between the producer and a duly licensed refuse collector.

Procedure for Adjustment

There is hereby created a Rate Board consisting of the Chief Administrative Officer, who shall act as chairman, the Controller, and the Manager of Utilities. The Board shall convene upon call of the Chairman or the other two members and two members shall constitute a quorum. The Board shall act by majority vote. Any member of the Board may from time to time designate a subordin-

APPENDIX A

ate from his own department to act in his place and stead as a member of the Board.

Any person, firm or corporation (including any holder of a permit to collect and dispose of refuse) affected by the above schedules of rates, or by any revised schedule of rates hereafter placed in effect, and desiring an increase, decrease, or other adjustment or change in, or addition to, such rates or schedules or the regulations appertaining thereto, shall file an application therefor with the Chairman of the Rate Board, who shall thereupon refer the same to the Director of Public Works for hearing, report and recommendation as hereinafter provided, unless the Rate Board shall determine that the application lies beyond its powers or presents no substantial question as to the justice or reasonableness of the rates, schedules of rates or regulations then in effect or is otherwise frivolous, in any of which events the Rate Board shall deny the application without further proceedings thereon.

Within thirty days thereafter, the Director of Public Works shall commence a public hearing upon the application and shall, not less than twenty days in advance of such hearing, cause to be published at least once in the official newspaper notice of the time and place thereof. The Director of Public Works shall be empowered to make or cause to be made such studies and investigations as he may deem pertinent to the application, to continue the hearing from time to time for that purpose, and to introduce the results of such studies and investigations in evidence. The applicant, and any person, firm or corporation affected by the application, shall be entitled to appear at the hearing and be heard. Any such person, firm or corporation desiring notice of further proceedings or action upon the application may file with the Chairman of the Rate Board a written request for such notice, setting forth his name and mailing address.

Upon the conclusion of the hearing and within ninety days after referral to him of the application, the Director of Public Works shall make and file with the Chairman of the Rate Board a Report setting forth the facts as found by him from the evidence taken and record made at the hearing, and a Recommended Order. The Recommended Order, if it provides for any change in the rates, schedules of rates, or regulations then in effect, shall set forth the date upon which the change is to take effect, which date

shall be not less than fifteen days from the date of filing of the Recommended Order with the Chairman of the Rate Board. The Chairman of the Rate Board shall publish the Recommended Order, together with notice of filing thereof, in the official newspaper, and shall mail notice of the filing of the Report and Recommended Order to the applicant and to any others who shall have filed written requests for notice as hereinabove provided.

At any time within fifteen days after filing of the Director of Public Works' Report and Recommended Order with the Chairman of the Rate Board, the applicant or any person, firm or corporation affected by the application, may file with the Chairman of the Rate Board any objections that he may have to the Recommended Order. If no such objections be filed, then the Recommended Order shall be deemed the Order of the Rate Board and shall take effect according to its terms without other or further action by the Rate Board. If any such objections be filed, then the Rate Board, upon not less than ten days notice by mail to the applicant and to others who shall have filed written requests for notice as hereinabove provided, shall hear the objections and, upon the basis of the evidence taken and record made upon the hearing before the Director of Public Works, shall grant or deny the application in whole or in part and shall make such order, to take effect at such time, as may be just and reasonable. In the event of inability or failure of the Rate Board to render a decision within sixty days of the date of filing with it of the Director of Public Works' Report and Recommended Order, then the said Recommended Order shall be deemed the order of the Board and shall take effect upon expiration of said sixty day period.

Any revised rates, schedules of rates or regulations placed in effect pursuant hereto shall be just and reasonable.

An application filed pursuant to this section and denied in whole or in part may not be renewed for a period of one year from the date of filing in the absence of an intervening change in conditions.

(b) Any collection and disposition rates or charges for establishments other than residences, flats and apartment houses of not more than 600 rooms, shall be subject to contract between the producer and a duly licensed refuse collector.

SECTION 7. It shall be unlawful for any refuse collector to

APPENDIX A

charge a greater rate for the collection and disposition of refuse than that fixed in, or pursuant to, Section 6 of this ordinance.

Nothing herein contained shall be taken or construed as preventing a refuse collector from charging a less rate or charge for the collection of refuse than that fixed in, or pursuant to, Section 6 of this ordinance.

SECTION 8. Each licensed refuse collector shall be assigned a number by the Director of Public Health. The Director of Public Health shall furnish each collector a metal badge on which is marked the number assigned the collector, who at all times while collecting refuse shall wear said badge in plain view. The Director of Public Health shall collect from each collector for the expense of providing said badge and the issuance of said license the sum of \$5. Each vehicle or wagon in which refuse is transported through the streets shall be assigned a number by the Director of Public Health and the number thereof shall be plainly marked thereon.

SECTION 9. The license, as distinguished from a permit herein, of any refuse collector, may be revoked by the Director of Public Health for failure on the part of the refuse collector to properly collect refuse, or for overcharging for the collection of same, or for insolence towards persons whose refuse he is collecting, and it shall be unlawful for any person whose license is so revoked to collect refuse in the City and County of San Francisco.

No license of a refuse collector shall be revoked except upon a hearing of which the refuse collector has been given a notice of at least three days.

SECTION 10. Upon the payment of the rate fixed in or pursuant to Section 6(a) of this ordinance for the collection and removal of refuse, the person paying the same shall be entitled to, and there shall be delivered to him, a receipt on which shall be shown the amount paid, the premises for which it is paid, the name and number of the collector, the number of the vehicle or wagon, and, in clearly legible print, the schedule of rates applicable to his classification of establishment. On the face of said receipt there shall be printed the following words: "The rates for the collection of refuse are fixed pursuant to initiative ordinance

and are printed on the back of this receipt. Complaints as to service should be made to the Department of Public Health."

Upon the payment of a rate fixed by contract pursuant to section 6(b) hereof, the person paying the same shall be given a receipt which shall show the amount paid, the period for which paid, the premises for which paid, the name and number of the collector and the date of payment, and shall bear the notation that the rate charged is subject to private contract.

SECTION 11. Disputes over charges made by collectors or as to the character of the service performed shall be decided by the Director of Public Health. Any charges made in excess of rates fixed pursuant to this ordinance, when determined by the Director of Public Health, shall be refunded to the person or persons who paid the excess charge.

SECTION 12. A refuse collector shall be entitled to payment for the collection of refuse at the end of each month from each householder or landlord served by him and from whom the payment is due.

SECTION 13. The initiative ordinance passed by the People of the City and County of San Francisco on June 14, 1927, providing for the collection and disposition of refuse in the City and County of San Francisco; providing for the licensing of refuse collectors by the Board of Health; fixing the maximum rates or charges for the collection of refuse by licensed refuse collectors from homes and apartment houses; dividing City and County of San Francisco into collection routes; and providing penalties for the violation of the provisions of this ordinance, and all other ordinances in conflict herewith, are herewith repealed.

SECTION 14. Any person, firm or corporation who shall violate any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed five hundred (\$500) dollars, or by imprisonment in the County Jail for not more than six (6) months, or by both such fine and imprisonment.

SECTION 15. This ordinance shall take effect ten days after the declaration of the official count of the votes cast therefor; pro-

APPENDIX A

vided, however, that for the purpose of issuing licenses to refuse collectors, application may be filed and the licenses issued during the period between the final approval of this ordinance and the date of its taking effect.

SECTION 16. The Controller shall furnish the Director of Public Health with such financial data, including data as to the cost of refuse collections, as may be required by the Director to enable him to perform his functions under this ordinance. The Controller shall likewise make available at any hearing before the Director of Public Works upon an application filed pursuant to section 6 hereof such financial data, including data as to the cost of refuse collections, as the Director of Public Works may deem pertinent to the issues raised by the application. Each collector holding a permit shall keep such records and render such reports as may be required by the Controller to enable him to develop the above-mentioned data, and the Controller shall have access to such records.

SECTION 17. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. It is hereby declared that this act, and each section, subsection, sentence, clause and phrase thereof, would have been passed irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases had been declared unconstitutional. [*Adopted, 1932; amended, 1946; 1954*]

REGULATION OF STREET RAILWAY CARS

Adopted May 2, 1935

Providing for the Operation of Street Railway Cars by a Motorman and Conductor, Specifying the Entrance Age of Employees on Street Railways,, and Providing a Penalty for Violations Thereof.

Be it Ordained by the People of the City and County of San Francisco:

SECTION 1. Every street railway car and every cable car while carrying passengers in the City and County of San Francisco, except street railway cars acquired or to be acquired by the City and County of San Francisco subsequent to January 1, 1939, shall be in charge of a motorman or a gripman and a conductor; every motorman and gripman and conductor employed in the operation of any street railway car or cable car must be an adult of not less than twenty-one (21) years of age.

This ordinance shall not be repealed, modified or amended except by vote of the electorate.

SECTION 2. Any person, firm or corporation violating any provision of this ordinance shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined for each offense, not less than Fifty Dollars (\$50), nor more than Three Hundred Dollars (\$300), or by imprisonment for a term not exceeding six (6) months in the County Jail of the City and County of San Francisco, or by both such fine and imprisonment. [*Adopted, 1935; amended, 1954*]

INDEX

SAN FRANCISCO CHARTER

EXPLANATION

This index has been compiled as an aid in locating any provision of the San Francisco Charter which may concern the reader. It represents a thorough analysis of each Charter section and a studied effort in each instance to place section references under the topic headings most likely to occur to the reader.

The great majority of references in the index are repeated under several appropriate headings to allow for differences in readers' ideas as to where to look first. Where there are several references concerning one point, however, the practice has usually been to make up a group and place it under one heading only. Under other headings, then, cross-references are made to the heading containing the group. Cross-references may also appear under the heading which contains the group. Thus, for example, under the heading **RATES AND FARES** is found the cross-reference "Public utilities, see **Public Utilities**." This means to the reader who is looking for sections dealing with public utilities rates or fares that he should consult the heading **PUBLIC UTILITIES**. Turning to that heading he does find a group of once reading, Fares, see *infra*, Rates and fares."

Cross-referencing of the type discussed above is a common practice in indexing and has several desirable purposes. It tends to simplify the index, making it easier to use, and it keeps the index within a reasonable length. Further, it often affords to the reader convenient suggestions as to numerous topic headings he should consult for complete research on his problem.

This index embraces the Charter sections as they existed at the time the Charter was reprinted in March, 1955. Changes necessitated by amendments and additions to the Charter occurring subsequent to that date are reflected in the Cumulative Supplemental Index and the Table of Deletions. The owner of this index is enabled thus to keep it current by striking out the lines of print which are listed on the Table of Deletions. He is respectfully urged to do that and to consult the Supplemental Index for substituted lines and for references covering new provisions of the Charter.

TABLE OF DELETIONS FROM THE INDEX TO THE SAN FRANCISCO CHARTER NECESSITATED BY THE 1956 TO 1960 AMENDMENTS TO THE CHARTER

[References are to pages of the original INDEX, to columns of print (left or right), and to lines in the columns. The lines are counted from the top of the column in all cases, and each line upon which a printed character appears is included. The headings "San Francisco Charter" and "Index" are not included. The lines indicated are to be deleted. Substitute lines, where proper, containing both old and new section references are supplied by the CUMULATIVE SUPPLEMENTAL INDEX.]

PAGE	COLUMN	LINE(S)
1	L	17, 18, 22, 23
1	R	20
2	L	44
2	R	16, 17, 42, 43
3	L	54, 55
3	R	46
7	L	57
8	L	15, 27, 28
16	L	40, 52
16	R	5, 9, 21, 32, 34, 38, 49
17	L	21, 22, 23
21	R	2, 3
22	R	2, 3
24	L	10-13, 23-25, 35, 44, 45
26	R	44, 45
28	L	15, 16, 25 through 28
30	L	17, 18
33	L	39
33	R	35
36	L	4, 8
37	L	44, 45, 48, 53
37	R	2, 7, 30 through 38, 46
38	L	4, 15, 16, 28, 34-37, 41-45
38	R	9, 22, 38, 42
39	L	5
39	R	46, 48
44	R	14
44-46	Delete all references under headings "Health Service" and "Health Service Board." Consult those headings in the Supplemental Index for new references.	
46	R	56, 57
47	L	8, 9, 46, 47
47	R	7, 8, 22, 23, 24
55	R	14, 15
57	L	10, 11
57	R	34, 35, 44, 48, 51, 52, 53
58	L	3 through 7
58	R	12, 13, 35 through 37
59	R	31
60	L	14, 15
61	L	38
61	R	42, 43, 45

SAN FRANCISCO CHARTER

TABLE OF DELETIONS FROM INDEX — Cont'd

PAGE	COLUMN	LINE(S)
62.....	L.....	4, 11, 14, 27, 28
62.....	R.....	17
63.....	L.....	31, 32
63.....	R.....	35, 36, 37, 45, 46
64.....	L.....	24
64.....	R.....	13, 16, 17, 35
65.....	L.....	5, 7, 28, 29
66.....	L.....	3
66.....	R.....	33
71.....	L.....	35, 36
71.....	R.....	4 through 6
76.....	R.....	27, 28
77.....	R.....	23 through 26
79.....	L.....	16, 19, 25 through 28, 32, 34, 36, 37, 41, 42
80.....	L.....	8, 9, 17
80.....	R.....	16, 17, 35, 38
81.....	L.....	17, 25, 27
81.....	P.....	22
83.....	L.....	42, 43
83.....	R.....	5, 6, 10, 11, 14, 17, 18, 30 through 32
85.....	L.....	6, 43
85.....	R.....	10, 11, 38, 39, 53, 54
86.....	L.....	3, 4, 39, 40, 46
86.....	R.....	41, 54, 55
87.....	L.....	9, 58, 57
87.....	R.....	4, 5, 7, 10 through 16, 18, 19
88.....	L.....	17
89.....	L.....	37
90.....	L.....	9
91.....	L.....	33, 34
92.....	R.....	15, 20
94.....	R.....	31, 82
96.....	R.....	27, 28
97.....	L.....	46, 47
97.....	R.....	35, 43, 51
98.....	L.....	4
100.....	R.....	16, 17

INDEX

A

ABANDONMENT

Lands not needed for park or recreation, 141.1
Market street railway, agreement as to, 199.1 par 5 (e)
Street railway abandonment, 132, 132.1

ABATEMENT PROCEEDINGS

Dangerous buildings subject to, 38

ABSENCE

Boards and commissions meetings, penalty, 19
Compensation earnable during, 165.2(A)
Jury duty absences noted, 150
Retirement service credits affected by, 165.2 (G) (3)

ABSENCE FROM CITY

Residence requirement, exception as to, 7

ABSENCE FROM STATE

Officer's absence, prohibition of, 6
Vacancy in office by, 6

ACADEMIC DEGREES

Night university having power to grant, 9

ACADEMY OF SCIENCES

California, see **California Academy of Sciences**

ACCOUNTANTS

County, see **County Accountant**

ACCOUNTS AND PROCEDURE

Budgeted items recorded by, 64
Controller as supervising, 64
Expense appropriation items, 76
Joint custody accounts of items in joint custody safe, 83
Keeping, controller as, 64
Public Utilities commission keeping separate, 64
Public works cost accounts, 95
Revenues recorded by, 64
Transactions shown by, 64

ACT OF GOD

Extension of contract time for delays due to, 97

ACTING MAYOR

Appointment from board of supervisors, 25
Failure to designate as tolling time limitations, 14

ACTIONS

City attorney, commencement by, 26
Dismissal by city attorney, limitation upon, 26
Harbor master as suing or defending, 48
Record of, city attorney to keep, 26
Registers of, duty of keeping, 26
Taxpayers' suits, generally, 27

ACTUARY

Generally, see appropriate lines in **Firemen's Retirement**;
Police Retirement; **Retirement**
Appointment of, 159
Retirement system changes, reports for, 158

ADDITIONAL POWERS

Conferring of by supervisors, 9

ADJUSTMENT

Fire department salaries, survey, 36.2
Police department salaries, survey, 35.5.1

ADMINISTRATION

Charter, duty to follow, 22
Chief administrative officer as responsible for, 60
Code, enactment and publication of, 23
Departments, see **Departments**
Heads, boards and commissions, 19 (h)

ADULT PROBATION

Board—
city officers, members as, 4
continuance of powers and duties, 58
Officer—
appointing officer, as, 58
appointment by superior court judges, 58
assistants, deputies and employees, appointment of, 58
civil service applicable to assistants and employees, 58
continuance of employees under civil service, 58
pension provisions of charter applicable to, 58
retirement provisions of charter applicable to, 58
salaries and wages of, 58

ADVERTISING

Budgeting and control by chief administrative officer, 60
Newspaper, see **Official Newspaper**

ADMISSION FEES

Permission to charge granted by recreation and park commission, 42

AFFIRMATIONS

Retirement board secretary or actuary administering, 159

AGREEMENTS

Contracts, see **Contracts**

Harbor transfer agreements, power to make, 48.1

AIR CORPS

Veterans preference in examinations, 145.01

AIRPORT

Civil service, employees deemed appointed under, 125

Continuance of employees in positions in, 125

Leasing of properties, 93

Other airports, employees as eligible for, 125

Public utilities commission in charge of, 121, 122, 125

ALLOTMENTS

Additional, for emergencies, 72

Contract certifications limited by, 72

Emergencies requiring additional, 72

Excess expenditures prohibited by, 72

Income or revenues, controller allotting according to, 72

Liabilities approvals by controller limited by, 72

Purchase order certifications limited by, 72

Warrants issued as limited by, 72

ALTERATIONS

Inspection of applications for, 38

AMENDMENTS

Budget estimate, salaries standardization revisions requiring, 151.3

Charter, 183

Master plan, 116

Ordinances, 13, 15, 17

Salary ordinance, 73

fire department salary revisions, for, 36.2

police department salaries, for, 35.5.1

Schedule of compensations amended, 151

AMERICAN RED CROSS

Continuance in city service after war service in, 153.1 (a)

Leaves granted for service, 151.1 (b)

Military leaves, service deemed as, 153.1 (a)

Reinstatement after service with, 153.1 (a)

Service with as city service, 153.1 (a)

AMERICAN RED CROSS—Cont'd

Time limit for reinstatement after service with 153.1 (a)

ANCHORING OF VESSELS

Harbor commission controlling, 48

ANNUAL EXECUTIVE BUDGET

Mayor's duties as to, 25

ANNUAL REPORTS

Boards' duty to make, 19 (e)

Commissions' duty to make, 19 (e)

Controller's financial reports, 65

Department heads' duty to make, 20

APPEALS

Hearings, see **Hearings**

License and permit appeals, 24

Medical care determinations, 172.1 sub 3 (a) 4

Promotional appointment terminations, 148

Removal and suspension proceedings, 154

Writing, removal appeals in, 154

Zoning matters—

change decisions, 117, 117.1

variances, 117.3

APPEAL BONDS

Custody by warrant and bond deputy, 30

Discharge of persons on approval of, 30

Magistrate approval of, 30

APPLICATIONS

Licenses and permits, for, 24

APPOINTING OFFICER

Adult probation officer as, 58

Bureau head as, 20

California Academy of Sciences, chief administrative officer as appointing officer, 52

Clerk of board of supervisors as, 12

Commission as, 143

Department heads as, 20

Director of planning as, 116

Findings against employees as final, 154

Health service board president as, 172.1 sub 2

Institution head as, 20

Librarian as, 43

Permanent appointment recommended by, 148

Probation officer of juvenile court as, 58

Recreation and park department general manager as, 41

Requisitioning for appointees, 148

Termination of appointment during probation period, 148

Utility head as, 20

INDEX

APPOINTMENTS

Assessor's office, 28
Board members, by mayor, 25
Board of permit appeals, 39
Citizenship required, 7
City attorney's office, 26
Civil service, see **Civil Service Appointments**
Commission members appointed by mayor, 25
District attorney's office, 29, 30
Elector status required, 7
Harbor commission members, 47
Interference with as prohibited, 22
Library commission, 43
Limited tenure, see **Limited Tenure Appointments**
Mayor's secretaries and stenographers, 25
Municipal court clerks, 55
Notice to civil service commission of, 143
Residence required, 7
Sheriff's office, 32
Temporary, approval required, 20
Treasurer's office, 31
Vacancy in office, appointment by mayor, 25
War memorial, appropriation for, 44
Warrant and bond office, 30

APPRAISALS

Acquisitions of real property, for, 91
Departmental purchases or leases, for, 91
Depreciation of utilities based on, 128
Property sales, appraisals for, 92
Utilities depreciation based on, 128

APPROACHES

Art commission approval of designs for, 46

APPROPRIATIONS

Allotments for expenditures based on estimated budget, 72
Authority for, generally, 72
Bond items not specifically appropriated, administration of, 72
California Palace, for, 50
Capital improvement appropriations subject to planning department action, 69.1
Controller's monthly reports as to, 65
Emergency reserve fund appropriations, 79
Expenditure obligation depending upon appropriations and balances, 86
Expenditures to be in pursuance of, 85
Health service appropriations as prohibited, 172.1 sub 6
Interest items not specifically appropriated, administration of, 72

APPROPRIATIONS—Cont'd

Materials supplies and equipment, segregation of, 90
Mayor's office, for, 25
M. H. de Young memorial museum, for, 51
Municipal railway fund appropriated for market street railway, 119.1 par 6
Municipal railway-Market street extension fund as subject to, 119.1 par 3 (a)—(d)
Municipal railway surplus for initial payment on Market street railway, 119.1 par 5 (a)
Ordinances, see **Appropriation Ordinances**
Public improvement revolving fund, for, 110
Reductions of mandatory appropriation to meet emergency, 70.1 sub 6
Redemption items not specifically appropriated, administration of, 72
Retirement funds contributions, for, 160, 161.1.1, 165.1.3
Schedules of allotments for expenditures based on estimated income, 72
Supplemental appropriations—
 capital improvement projects, request, 69.1
 civil service examinations, for, 149
 eligible list during war time, for, 145.1
Tax levy, for, 78
Tax revenues, amounts appropriated limited by, 72
Unused appropriations, transfer of, 80
Use, of, authority for, 72
Utilities fund, use of, 127
Utilities reconstruction and replacements, 128.1
Withdrawals from treasury to be in pursuance of, 85

APPROPRIATIONS ORDINANCES

Accounting control basis furnished by, 72
Adoption of, generally, 72
Amendment—
 fire department salary revisions, 36.2
 police department salaries, 35.5.1
 re-advertising upon, 72
 salary ordinances, 73
Authority for controller, as, 72
Class titles and numbers used on, 141
Controller preparing draft of, 72
Draft submitted by mayor to supervisors, 72
Expense appropriations items, accounts of, 76
Fiscal control basis as furnished by, 72
Hearing dates on proposal for, 72
Increases in salary figured at time of, 71

APPROPRIATION ORDINANCES—

- Cont'd
- Municipal railway salaries standardization, amendment for, 151.3
- Number of subjects in, 13
- Passage of—
 - generally, 13
 - after adoption of budget, 72
- Positions as created by, 143
- Readings required for, 13
- Readvertising in case of amendment, 72
- Reductions by mayor, 14
- Referendum as applying to, 179
- Requisites of, 72
- Salary deductions for emergency—
 - figuring in, 70.1 sub 3
 - revision for, 70.1 sub 3
- Salary increases determined at adoption of, 71
- Salary ordinance passed at same time, 73
- Special election fund, 181
- Subject, limitation to appropriations, 13
- Submission as deemed regular introduction of, 72
- Surplus appropriated by supplemental ordinance, 80
- Supplemental, exemption from referendum, 179
- Taxation revenues limiting amounts appropriated by, 72
- Vetoes by mayor, 72
- Volunteer fire department members between 1850 and 1866, relief of, 170

ARCHITECT

- Appointment of by mayor, 45
- Planning commission contracting with, 116

ARCHES

- Art commission approval required for, 46

ARMY AND NAVY

- Civil service examination preference to veterans, 145.01
- Military leaves, see **Military leaves**

ARRESTS

- Warrants for, 29, 30
- Without warrant, cash bail in cases of, 30

ART

- Advancement, art commission control of expenditures for, 46
- Commission, see **Art Commission**

ART COMMISSION

- Advancement of art and music, control of expenditures for, 46
- Advice to private parties by, 46
- Approaches designs, approval of, 46
- Architect, appointment of, 45
- Artist-painter, appointment of, 45

ART COMMISSION—Cont'd

- Bridge designs, approving of, 46
- Building design, approval of, 46
- California academy building plans approved by, 52
- Compensation, service without, 45
- Creation of, 45
- Duties of, generally, 46
- Elevated ways designs as approved by, 46
- Ex officio members of, 45
- Expenditures for advancement of art and music, control of, 46
- Fence designs, approval of, 46
- Landscape architect for, 45
- Lamp designs, approval of, 46
- Lay members, appointment of, 45
- Litterateur, appointment of, 45
- Mayor, appointment of members by, 45
- Music expenditures, supervision of, 46
- Musician, appointment of, 45
- Number of members of, 45
- Painter, appointment of, 45
- Policy supervision respecting arts, 46
- Powers of, generally, 46
- Private property—
 - beautification, advice as to, 46
 - designs, approval of, 46
- Sculptor, appointment of, 45
- Tax levies to support, 78
- Works of art, see **Works of Art**

ARTIST-PAINTER

- Appointment by mayor, 45

ARTIST-SCULPTOR

- Appointment by mayor, 45

ART WORK

- Works of art, see **Works of Art**

ASSESSMENT

- Delinquencies noted to tax collector by public works department, 107
- Special assessments—
 - borough, see **Boroughs**
 - installment payment of, 110, 111
 - interest as added to, 110
 - limitation on, 111
 - public improvements, 110
 - revolving fund as reimbursed from proceeds of, 110
- projects, see **Special Assessment Projects**

ASSESSOR

- Generally, 28
- Appointments by, 28
- Continuance in absence of approval of charter amendment, 5

INDEX

ASSESSOR—Cont'd

Elective officer, as, 5, 28
General election, election at, 5
Official bond of, 28
Salary of, 28, 151.1
Term of, 5

ASSISTANT ATTORNEYS

City attorney, 26, 34, 34.1
Civil service as applicable to, 34.1
District attorney, 29, 34, 34.1
Retirement allowance of, generally, 34
Salary subject to standardization, 34

ASSISTANTS

Attorney, see **Assistant Attorneys**
Chief of inspectors, assistant to, 35.4
Director of traffic as having, 35.4
Elective officers, of, 34
Inspectors in bureau of inspectors, 35.3
Law librarians, 57
M. H. De Young memorial museum, 51
Public administrator, attorneys for, 61
Public defender, generally, 33, 34, 34.1
Public welfare department, for, 61.1 sub 1
Retirement allowance for, generally, 34
Superintendent of schools, qualifications for, 136
Treasurer, 31

ASSUMPTION OF RISKS

Workmen's compensation, 172

ATHLETIC CONTESTS

Admission fees, permission to charge, 42
Lease of stadiums and recreation fields for, 42

ATTENDANCE

Boards and commissions meetings, compelled, 19
Penalty for non-attendance, 19

ATTORNEYS

Assistant, see **Assistant Attorneys**
Bureau of delinquent revenue collection, for, 261
City, see **City Attorney**
Civil service, exception from, 142
District, see **District Attorney**
Law practice, see **Law Practice**
Public administrator, for, 61
Sheriff's office, for, 32

AUCTIONEERS

Inspection of, 24

AUCTIONS

Sale of real property by city, 92

AUDITS

Claims audited by controller, 85
Controller as conducting, 66
Controller's books, annual audit of, 68

AUDITOR

Controller as, 64
County accountant, auditor deemed appointed as, 63

AUTOMOBILE PARKING

Lease of parks and squares subsurface-for, 42

AVENUES

Buildings on—
 power to erect, 42
 use restricted to recreation, 42
Control management and direction by commission, 42
Leases of land, 42

B

BAIL

Bonds, see **Bail Bonds**
Cash bail fixed by warrant and bond deputy, 30

BAIL BONDS

Custody by warrant and bond deputy, 30
Discharge of persons on approval of, 30
Issuance by warrant and bond deputy, 30
Magistrate approval of, 30

BALANCES

Temporary transfers or loans made from idle balances, 81

BALLOTS

Election, see **Elections; Initiative, Referendum and Recall**

BAR MEMBERSHIP

Qualification for office, see **Law Practice**

BASIC WEEK OF SERVICE

Police department, 35.5 1/2 (b), 35.5 1/2 (d)

BAY

Harbor commission having control and management of, 48

BEATS

Patrol special police officer as owning, 35.10

BEAUTIFICATION

Art commission advice to private parties as to, 46

BEQUESTS

See also : Devises ; Gifts
Investment of, 82
Palace of legion of honor, 50
Power of city to receive, 2
Receiving for city, 19 (d)
Title vesting in city, 19 (d)

BIDS

Awards, notice of, 89
Bonds on filing of, 99
Brand names purchases, bids on, 88
City department bidding on city contracts, 95
Collusion as to, penalties, 100
Controller awarding supplies purchases where purchaser and department head differ, 88
Experience and financial qualifications, bidders, 95
Lease of city property, bids on, 93
Lowest bid, report on failure to accept, 95
Materials and equipment purchased on sealed bids, 89
Open market purchases as subject to, 88
Publication of invitation for, 224
Public works contracts under \$2000 as subject to, 95
Purchases by city, bids on, 95
Re-advertising for, 95
Records kept of, 88
Rejection—
 advertising reserving rights, 95
 purchaser of supplies, by, 95
Sale of real property by city, bids on, 92
Security given as provided by ordinance, 99

BILLS

Purchases of materials, approval of, 20

BLIGHTED AREAS

Redevelopment project plans submitted and acted upon, 118

BLIND PERSONS

Hiring of, 145.02

BOARD OF ADMINISTRATION

Retirement board succeeding, 159

BOARD OF EDUCATION

See also : School Board ; School Department ; Schools ; Teachers
Ballot for nomination, 134
Budget estimates, hearing on, 69
Certificates of teachers, power as to, 135
Charges for removal of superintendent of schools, 136
Commissioners composing, 134

BOARD OF EDUCATION—Cont'd

Compensation of members, 134
Confirmation by electors, 134
Duties of, generally, 135
Hearings, budget estimates as subject of, 69
Ineligibility resulting from rejection, 134
Mayor—
 appointing members of, 134
 nominating members of, 49
Membership of, 134
Monies, powers as to, 135
Nominations of members, 134
Officers of city, members as, 4
Powers of, generally, 135
Public schools controlled by, 134
Recall, subject to, 134, 179
Rejection by electors, 134
Removal of superintendent of schools by, 136
Removal, subject to, 134, 179
Superintendent of schools appointed by, 136
Suspensions, subject to, 134
Salaries of employees, twelve payments, 135
Teachers, see Teachers
Terms of office of members, 49, 134

BOARD OF ELECTION COMMISSIONERS

Abolishment of, 173
Registrar succeeding, 173

BOARD OF EQUALIZATION

Board of supervisors as, 9
Clerk, clerk of board of supervisors as, 12

BOARD OF FIRE PENSION FUND COMMISSIONERS

Retirement board succeeding, 159

BOARD OF HEALTH

Abolishment of, 61
Director of public health having powers and duties of, 61
Termination of terms of members, 61

BOARD OF LIBRARY TRUSTEES

Commission as successor of, 43
Number of trustees in, 43
Terms of office of, 43

BOARD OF PERMIT APPEALS

See also : Licenses and Permits
Appeals to, 24, 39
Appointments to, 39
Compensation of members of, 39
Number of members, 39
Right to appeal to, 39

INDEX

BOARD OF PERMIT APPEALS—

Cont'd

Terms of office in, 39

Zoning variance decisions appealed to, 117.3

BOARD OF PUBLIC WORKS

See also : **Director of Public Works**

Abolishment of, 106

Director of public works succeeding, 106

BOARD OF STATE HARBOR COMMISSIONERS

See also : **Harbor Commission**

Acceptance of properties from, 47

Employees transferred to harbor commission, 48.1

Retirement system benefits for, 48.1

BOARD OF SUPERVISORS

Abandonment of street railways as heard by, 132.1

Abolishment of departments by, 9

Acting mayor appointed from, 25

Action by resolution or ordinance, 13

Agreements as to harbor transfer to city, 48.1

Administrative code, enactment and publication of, 23

Administrative heads of, 19 (h)

Annual message of mayor to, 25

Appeals from zoning change decisions as heard by, 117, 117.1

Appointees of mayor, removal by board, 11

Appointment of members to city service after term, 5

Attendance, compelling of, 19

Audit of controller's books ordered by, 68

Bequests, powers and duties as to, 19 (d)

Board of equalization, as, 9

Bonds—

members, 10

officers and employees, 19 (i)

Borough affairs, see **Boroughs**

Borrowing money by, 81

Branch offices in consolidated county established by, 189

Budget message, printing and distribution, 72

Buildings use in harbor assigned by, 48

Cable car funds, providing of, 119.3

Calendar of business, publishing of, 10

California palace, appropriations for, 50

California street railroad—

budget, adoption of, 119.4

payment, duties as to, 119.4

Capital improvement recommendations to, 69.1

Canvass of votes, 9

BOARD OF SUPERVISORS—Cont'd

Chief administrative officer having voice in, 60

Charter, duty to follow, 22

Clearing house representative provided by, 84

Clerk, see **Clerk of Board of Supervisors**

Codification of ordinances, 17

Committees of, 10

Compensation of members, 10

Consolidated budget estimates to, 72

Contingent fund for chief of police, provision for, 35.8

Contract procedure established by ordinance, 99

Controller—

books, audit ordered, 68

confirmation of, 63

Creation of departments by, 9

Departments—

creation of, 9

investigation of, 21

Devises, powers and duties as to, 19 (d)

Dock use assigned by, 48

Duties of, generally, 19 (a)

Emergencies—

declaration as to, 70.1

meeting place in case of, 10

Election for public utilities bonds called by, 105

Elective officer, members as, 5

Form of notes as prescribed by, 81

Gifts, powers and duties as to, 19 (d)

Harbor—

commission powers conferred, 48

facilities leases approval, 48

fees schedules submissions, 48

transfer to city, powers as to, 48.1

Interest on notes fixed by, 81

Interferences by, prohibition as to, 22

Investigation of departments, power of, 21

Journal of proceedings—

generally, 10

clerk of board as keeping, 12

votes recorded in, 13

Juvenile court probation officer employees allowed by, 58

Law library, providing for, 57

Lease of park or recreation grounds, approval, 42

Licenses and permits, regulation of, 24

Limitation upon appointments after term, 5

Limited tenure, recommendations, 145.1

Mains for sewers, water, gas, providing for, 112

Majority vote, definition of, 19

Master plans amendment copies to, 116

BOARD OF SUPERVISORS—Cont'd

Market street railway—
 budget, adoption of, 119.1 par 3
 payment, 119.1
 Mayor having seat in, 25
 Meetings of—
 generally, 10, 19 (f)
 attendance, compelling of, 19
 public entitled to attend, 19 (g)
 Membership of, 10
 M. H. De Young museum, appropriations
 for, 51
 Money, providing for custody of, 83
 Municipal election for members, 5
 Night university, provisions for, 9
 Nominee of mayor, removal by board, 11
 Number of classes of employment deter-
 mined by, 9
 Number of members of, 10
 Office in charge of clerk, 12
 Official bonds—
 members, 10
 officers and employees, 19 (i)
 Ordinances of, see **Ordinances**
 Payment of notes as governed by, 81
 Pier use assigned by, 48
 Police department salaries, fixing of,
 35.5.1
 Powers of—
 generally, 9, 19 (a)
 conferring on officers and commissions,
 9
 President—
 appointment of, 19 (b)
 committees appointed by, 10
 election of, 10
 presiding officer, as, 10
 term of, 10
 Private property danger, provisions as to,
 112
 Probation—
 employees provided by, 58
 salaries fixed by, 58
 Property—
 custody, providing for, 83
 sales, authorizing, 92
 Proposed budget transmitted to by mayor,
 72
 Public utilities—
 bond election, calling, 105
 lease or sale, 123
 reports on acquisitions, procuring, 119
 reserve funds, requiring of, 127
 Public works and improvements—
 charter provisions enforcement, 98
 procedure, powers as to, 107
 Quorum, majority as being, 19

BOARD OF SUPERVISORS—Cont'd

Record of proceedings—
 generally, 19
 clerk in charge of, 12
 Referendum by, see **Initiative Referendum
 and Recall**
 Removal of officer by, 11
 Resolutions of, see **Resolutions**
 Retirement—
 effectuation of provisions, 158
 exclusion from system, 158.1
 Retirement board membership by presi-
 dent, 159
 Revolving funds established by, 75
 Rules and regulations for affairs of,
 19 (a)
 Salaries of member, 10
 Salary survey fund authorized by, 151
 Sales—
 notes securing loans to city, 81
 real property, 92
 Schedules of compensation adopted by,
 151
 Secretary of, 19 (h)
 Sidewalk repair where owner fails, 108
 Special assessment projects, functions as
 to, 110
 Special committees of, 10, 19 (c)
 Special meetings, 10, 19 (g)
 Spur tracks request, functions as to, 114
 Standing committees of, 10, 19 (c)
 Streets accepted by after paving, 108
 Street railway—
 abandonment authorized by, 132
 supplemental permit for extension
 granted by, 132
 Superintendent of, 19 (h)
 Superior courts maintenance provided by,
 56
 Supplemental appropriations by, 80
 Tax levies by, 78
 Telephone connections for private per-
 sons, regulation of, 61
 Temporary meeting place of, 10
 Temporary transfers or loans made by, 81
 Terms of office, 5
 Trusts for city, authorizing performance,
 19 (d)
 Unencumbered balance transfers by, 77
 Utilities—
 lease or sale, power as to, 123
 rates changes submitted to, 130
 revenue deficiency, tax levy to meet, 130
 surpluses, transfer to general fund, 129
 Veto of appropriation ordinance, action
 on, 72
 Volunteer fire department members, re-
 lief of, 170

BOARD OF SUPERVISORS—Cont'd
 Voting power of mayor in, 25
 Zoning procedure action established by, 117.1, 117.3

BOARD OF TRUSTEES OF POLICE RELIEF AND PENSION FUND
 Retirement board succeeding, 159

BOARD OF TRUSTEES OF WAR MEMORIAL
 Compensation, service without, 44
 Duties as to war memorial, 44
 Managing director, appointment of, 44
 Mayor, appointment by, 44
 Number of members of, 44
 Secretary, appointment of, 44
 Terms of office of, 44

BOARDS
 Additional powers conferred by supervisors, 9
 Administrative heads of, 19 (h)
 Appointment to by mayor, 25
 Attendance, compelling of, 19
 Bequests, powers and duties as to, 19 (d)
 Bonds of officers and employees, 19 (i)
 Budget estimates filed with, 69
 Capital improvements projects, schedules and recommendations, 69.1
 Charter, duty to follow, 22
 Chief administrative officer making appointments to, 60
 Chief executive officer as city officer, 4
 City officers, members as, 4
 Combination of department functions by, 20
 Continuance of powers and duties, 2, 23
 Dealing solely through, 22
 Department affairs, power to investigate, 21
 Department head, chief executive as, 20
 Department heads responsible to, 20
 Devises, powers and duties as to, 19 (d)
 Duties of, generally 19 (a)
 Employment in firms regulated by, prohibited, 222
 Gifts, duties as to, 19 (d)
 Harbor commission having powers of, generally, 48
 Interference with as prohibited, 22
 Investigation of department affairs, power, 21
 Investment of trust funds by, 82
 Majority vote, definition of, 19
 Mayor having seat in, 25
 Meetings of, generally, 19 (f)
 Members as city officer, 4
 Officers of city, members as, 4

BOARDS—Cont'd
 Official bonds of officers and employees, 19 (i)
 Powers of—
 generally, 19 (a)
 supervisors conferring, 9
 Publication of rules and regulations, 19 (a)
 Quorum, majority as being, 19
 Record of meetings, 19
 Residence required during term, 7
 Retired persons excluded as members, 163 (a), 165.2 (J), 168.1.12, 171.1.12
 Retirement provisions excluding members of, 158
 Rules and regulations for affairs of, 19 (a)
 Salary—
 recommendations as to, 71
 standardization, exception from, 151.1
 Secretaries of, 19 (h)
 Special committee, provision for, 19 (c)
 Special meetings of, 19 (g)
 Standing committee, provision for, 19 (c)
 Superintendents of, 19 (h)
 Temporary loans or transfers approved by, 81
 Transfer of department functions by, 20
 Trustees of gifts to city, function as, 19 (d)
 Unencumbered balance transfers recommended by, 77
 Voting power of mayor in, 25

BOATS
 Harbor commission powers as to, 48

BONDED INDEBTEDNESS
 Additional for harbor as excluded from limit, 47
 Assumption of state's indebtedness as to harbor property, 47
 Borough, see **Boroughs**
 Borrowed money for, repayment of, 81
 Controller's statement as to propositions for, 183
 Foreign trade zones, for, 121
 Harbor bonds, fees producing sinking fund for, 48
 Harbor indebtedness—
 assumed by city, 47
 paid from harbor revenues, 48.1
 Limitation on—
 establishment of, 104
 exclusions from, 104
 harbor property acquisition excluded from, 47
 Payments from tax collections as preferred over city notes, 81

BONDED INDEBTEDNESS—Cont'd
Public utilities indebtedness, initiative election as to, 105
Refunding, see **Refunding Bonds**
Repayment of money borrowed for, 81
State law as governing, 101
Tax sufficient for interest, necessity for, 208

BOND FUNDS
Salary deductions during emergencies as reverting to, 70.1 sub 2

BOND ISSUES
Borough, see **Boroughs**
Emergency measures affecting, limitation on, 16
Harbor acquisition from state, 47
Market street railway balance, for, 119.2
Revolving fund for public improvement, proceeds to, 110
Special elections for, 174

BONDS
Bail, see **Bail Bonds**
Employees, bonds of, see **Official Bonds**
Issues, see **Bond Issues**
Official, see **Official Bonds**
Public improvements, bonds for, 103
Public utilities bonds not invalidated by error in proceedings, 105
Redemption statement submitted with budget estimates, 69
Revolving fund established by proceeds of public improvement bonds, 103
Special assessment project bonds, 110
Utilities expenditures for improvements financed by, restrictions as to, 74

BOOKS
Examination of department and office books, power as to, 21
Penalty for failure to produce, 21
Rules and regulations as to, 19 (a)

BOROUGHES (San Francisco-San Mateo Consolidation)
See also: **Consolidation (San Francisco-San Mateo Counties)**
Accountants hired by controller, 200
Accounts, controller keeping, 200
Administrative head, manager as, 204 (a)
Advertising—
delinquent tax list, 210
official advertising, 210
Advertising signs, powers as to, 195 (10)
Affidavit, clerk as taking, 201
Appointive officer, official bond of, 198
Appropriation for supplementing city and county services, 195 (30)

BOROUGHES (SF-SM Consol.)—Cont'd
Assessment, powers to levy, 195 (21)
Attorneys, power to hire, 195 (26)
Audits, powers to conduct, 195 (23)
Automatic—
city manager continuing as borough manager, 204
clerk of city as clerk of, 201
compensation of council members, 198
continuation of employees, contracts and ordinances, 217
council of, 197
incorporated cities as, 193
Bequests, powers to accept, 195 (24)
Board of supervisors—
borough changes approved by, 194
delinquent tax advertised by, 210
deposit of monies regulated by, 206
elections for boroughs, provisions for, 194
initiative, referendum and recall provisions by, 215
legislation for boroughs, 218
money deposits regulated by, 206
occupation zones prescribed by, 202
planning commission powers provided by, 202
power to legislate, 218
tax subvention, providing for, 207
transfer of borough powers approved by, 196
Bonded indebtedness—
authority for, 208
city and county not obligated, 208
limitation upon, 208
proceeds of bond, application of, 208
sinking fund, necessity for, 208
state law applying to procedure for, 208
term of bonds not to exceed life of improvement, 208
voters approval required, 208
Bonds—
authority for, 208
improvement bonds, 209
special assessment securing, 209
Boundary changes of, 194
Bridges, powers as to, 195 (4)
Budget—
adoption of, 206
charter fixing time limit, 206
city and county, similarity to, 206
civil service payment provided for, 212
manager as preparing, 204 (j)
powers as to, 195 (19)
taxation for, see *infra* Taxation time limit for, 206
City and county interchange of services with, 216

INDEX

BOROUGHES (SF-SM Consol.)—Cont'd

- Civil service—
 - agreement with city and county as to, 212
 - charter provisions, under, 212
 - exemption from, 212
 - ordinance providing for, 212
 - power to provide, 195 (28)
 - prior employees deemed appointed under, 212
- Claims—
 - disapproval for lack of fund, 206
 - scrutiny by controller, 200
- Clerk of—
 - city's clerk continuing as, 201
 - powers and duties, 201
- Commission—
 - appointment of, 194
 - boundaries, study as to, 194
- Compensation—
 - council members, 198
 - planning commission members, 202
 - powers as to, 195 (16)
- Consolidation of boroughs, 194
- Continuance—
 - city councilmen in office, 197
 - employees, contracts and ordinances, 217
- Contracts—
 - charter provisions relating to, 210
 - continuation of, 217
 - controller inquiring as to, 200
 - interest by officers and employees prohibited, 211
 - official advertising, for, 210
 - ordinances governing, 210
 - powers to make, 195 (22)
 - uniform provisions for all boroughs 210
- Controller—
 - access to books, records, cash, 200
 - accountants hired by, 200
 - accounts of transactions, 200
 - appointment by council, 187
 - charter prescribing duties of, 199
 - claims scrutinized by, 200
 - contracts scrutinized by, 200
 - duties generally, 200
 - election of, 2 197
 - financial transaction of officers and employees scrutinized by, 200
 - manager having power of, 197
 - oaths administered by, 200
 - official bond, 198
 - ordinance prescribing duties of, 200
 - records of transactions, 200
 - want of funds, disapproval of demands for, 206
 - warrants drawn or signed by, 200

BOROUGHES (SF-SM Consol.)—Cont'd

- Council—
 - advice from manager as to borough needs, 204 (f)
 - automatic boroughs, of, 197
 - city councilmen as members, 197
 - compensation of members, 198
 - continuance of city councilmen, 197
 - controller appointed by, 197
 - election of, 197
 - first meeting of, 198
 - legislative body, as, 198
 - legislative session open to public, 198
 - manager—
 - attending meetings, 204 (e)
 - no voting power, 204
 - meetings of, 198
 - money matters requiring majority vote, 205
 - official bonds fixed by, 198
 - ordinance, action by, 205
 - planning commission provided by, 202
 - president, choosing of, 199
 - quorum for, 198
 - referendum exercised by, 215
 - removal of members for attempts to influence manager, 204
 - resolution, motion or order, action by, 205
 - special election called by, 214
- Death benefits, power to provide, 195 (29), 213
- Debt—
 - adjustment on consolidation of boroughs, 194
 - limitation to available money, 206
- Delinquency sale on special assessment, 209
- Demands disapproved for lack of funds, 206
- Deposits of monies regulated by supervisors, 206
- Devises, powers to accept, 195 (24)
- Disability benefits, power to provide, 195 (29)
- Discovery and inspection powers, 195 (25), 200
- Dis-establishment of, 194
- Donations, power to accept, 195 (24)
- Duties of, generally, 195
- Elections—
 - boroughs changes, for, 194
 - charter provisions governing, 213
 - city and county elections, similarity to, 214
 - controller chosen by, 197
 - council members chosen by, 197
 - elections as to changes, 194

BOROUGHES (SF-SM Consol.)—Cont'd

- Elections—Cont'd
 - petition for borough changes, election as to, 194
 - powers as to, 195 (17)
 - special election, 214
 - time same as municipal election, 213
 - transfer of borough powers, 196
- Elective officers—
 - city and county officers disqualified as, 197
 - electors, as, 197
 - official bond of, 198
 - terms of, 197
- Elective office vacancy, filling of, 197
- Eminent domain, powers as to, 195 (9)
- Employment, powers as to, 195 (16)
- Establishment of, 193, 194
- Financial transactions of officers and employees scrutinized by controller, 200
- Fines paid to city treasury, 206
- Fire regulations, powers as to, 195 (12)
- First year indebtedness of, 206
- Fiscal procedure, 206
- Fiscal year same as city and county, 206
- Foreclosure of tax liens, 206
- Fund—
 - establishment of, 206
 - license taxes credited to, 206
 - payment by warrant only, 206
 - warrant for withdrawal, 200
- Garbage disposal, borough's powers as to, 195 (6)
- Gifts, power to accept, 195 (24)
- Hearing as to borough changes, 194
- Highways, powers as to, 195 (4), 195 (8), 195 (9)
- Improvements, see *infra*, Public works and improvements
- Incorporated cities automatically becoming, 193
- Indebtedness—
 - bonded, see *supra* Bonded indebtedness power to incur, 195 (20)
- Initiative, referendum and recall
 - board of supervisors to effectuate provisions, 215
 - charter provisions applying to, 215
- Interchange of services with city and county, 216
- Interest of officers and employees in contracts, penalty for, 211
- Joint management by manager, 204
- Joint undertaking with other bureaus, powers as to, 195 (31)
- Land sale for non-payment of special assessment, 209
- Legacies, powers to accept, 195 (24)

BOROUGHES (SF-SM Consol.)—Cont'd

- Legal counsel, power to hire, 195 (26)
- Legislation permitting exercise of powers, 218
- Legislative action by ordinance, 205
- Legislative body, council as, 198
- Legislative session of council as open to public, 198
- Liabilities limited to available money, 206
- Library and books in boroughs, 195 (2)
- Library board—
 - compensation of members, 203
 - council as providing for, 203
 - funds controlled and managed by, 203
 - library controlled and managed by, 203
 - ordinance providing for, 203
- Licenses and permits—
 - fees paid to city, 206
 - manager enforcing, 204 (d)
 - powers as to, 195 (13)
 - taxes credited to borough fund, 206
- Lighting fixtures in boroughs, 195 (4)
- Manager—
 - absence, temporary manager in event of, 204
 - administrative head, as, 204 (a)
 - administrative qualifications, appointment on, 204
 - advisory council on borough needs, 204 (f)
 - advisory board for, 204 (i)
 - annual budget prepared by, 204 (j)
 - appointment of, 204
 - assignment of personnel by, 204 (k)
 - budget prepared by, 204 (j)
 - charter providing additional powers, 204 (L)
 - city manager continuing as, 204
 - coercion from council, freedom from, 204
 - controller powers vested in, 197
 - council appointing, 204
 - council meetings attended by, 204 (e)
 - creation of office by ordinance, 204
 - disability, temporary manager in event of, 204
 - entire time to job required, 204 (g)
 - executive qualifications, appointment on, 204
 - full time to job required, 204 (g)
 - influence, freedom, 204
 - joint management of boroughs by, 204
 - licenses and permits, enforcement of, 204 (d)
 - ordinance—
 - additional powers provided by, 204 (L)
 - creating office, 204
 - enforcement of, by, 204 (b)

INDEX

BOROUGHS (SF-SM Consol.)—Cont'd
Manager—Cont'd
 parks and playgrounds supervision by
 204 (h)
 personnel, power as to, 204 (c)
 politics in appointment of, 204
 powers and duties, generally, 204
 purchase of supplies, freedom as to, 204
 relatives barred from employment, 204
 residence required, 204
 transfers of personnel by, 204 (k)
 voting powers on council, absence of,
 204
Mayor appointing council members of, 197
Meetings of council 198
**Money deposits regulated by supervisors,
 206**
**Money matters requiring majority council
 vote, 205**
Municipal court session in, 191
Municipal powers, 195 (32)
Name change, power as to, 195 (27)
Notice of borough change hearing, 194
**Nuisance abatement, powers as to, 195
 (14)**
New boroughs, establishment of, 194
**Newspaper publishing official advertising,
 210**
Oaths—
 clerk administering, 201
 controller administering 200
Officers, powers as to, 195 (16)
Official advertising—
 charter provisions governing, 210
 contracts for, 210
 newspaper publishing, 210
Official bonds—
 controller approving, 198
 council as fixing, 198
 premiums paid by boroughs, 198
Ordinances—
 action by, 205
 amendment between introduction and
 passage, 205
 bonded indebtedness, for, 208
 clerk attesting, 205
 continuation of, 217
 controller's duties prescribed by, 200
 effective dates of, 205
 emergency effective date, 205
 enacting clause of, 205
 manager enforcing, 204 (b)
 passing of, 205
 planning commission provided by, 202
 posting of, 205
 president signing, 205
 publication in newspaper, 205
Parks and playgrounds, 195 (3), 204 (h)
Petitions for boroughs changes, 194

BOROUGHS (SF-SM Consol.)—Cont'd
Penalties powers prescribed, 195 (15)
Pensions, 213
Planning powers of boroughs, 195 (1)
Planning commission—
 advisory powers of, 202
 compensation of, 202
 council acting as, 202
 ordinance providing for, 202
 powers and duties prescribed by ordi-
 nance, 202
 zoning ordinance recommendation by,
 202
Playgrounds in, 195 (3)
Police ordinances, powers as to, 195 (15)
Powers of, generally, 195
President—
 council as choosing 199
 executive head, as, 199
 process as served upon, 199
Proclamation for special election, 214
Publication—
 notice of boroughs change hearings, 194
 special election proclamation, 214
Public meetings of council, 198
Public properties, powers as to, 195 (7)
Public works and improvements—
 board of supervisors, powers as to, 209
 bond issue for, 209
 bonded indebtedness for, 208
 bond term not to outlast, 208
 charter permitting, 209
 continuation of, 217
 improvement districts established by
 supervisors, 209
 ordinances permitting, 209
 permitted project, 209
 planning commission advising as to, 202
 powers as to, 195 (21)
 special assessment for, 209
 state law permitting, 209
Reading rooms in boroughs, 195 (2)
**Recreational facilities in boroughs, 195
 (3)**
Records—
 controller keeping, 200
 open to public 198
Reports as to boundaries studies, 194
Resolution—
 action by, 205
 bonded indebtedness, for, 208
**Retirement system, power to provide, 195
 (29)**
Retirement—
 agreement with city and county for, 213
 contributions, 213
 death benefits, 213

SAN FRANCISCO CHARTER

BOROUGHES (SF-SM Consol.)—Cont'd **Retirement—Cont'd**

- ordinance providing for, 213
- participation same as city and county, 213
- prior service, credit for, 213
- Rules and regulations, powers as to, 195 (15)
- Salaries and wages, powers as to, 195 (16)
- Sewage facilities, power as to, 195 (5)
- Sidewalks, boroughs' powers as to, 195 (4))
- Sinking fund for bonded indebtedness, 208
- Special assessments—
 - authority for, 209
 - bond issue secured by, 209
 - charter provisions governing procedure, 209
 - continuation of, 217
 - correction of, 209
 - delinquency, sale for, 209
 - installment payments of, 209
 - land sale for non-payment, 209
 - procedure governed by charter provisions, 209
 - state law as governing procedure, 209
 - special elections called by council, 214
- Spur tracks, powers as to, 195 (11)
- Streets—
 - planning commission advising as to, 202
 - powers as to, 195 (5), 195 (8), 195 (9)
 - signs in boroughs, 195 (4)
- Subpoenas, power as to, 195 (25)
- Supplementation of city and county services, powers as to, 195 (30)
- Taxation—
 - authority for, 206
 - city and county, time same as, 206
 - delinquent list as advertised, 210
 - liens on property, as, 206
 - limitation on levy, 206
 - powers as to, 195 (18)
 - previous rates effective upon failure for current year, 206
 - special assessment, see *supra* Special assessments
 - subventions for city and county functions, 207
 - tax collector of city and county as collecting, 206
 - time limits same as city and county, 206
 - treasury of city and county, payment into, 206
 - valuation for levy, 206
- Tax subvention for city and county functions, 207
- Transfer of powers, 196

- BOROUGHES (SF-SM Consol.)—Cont'd**
- Use regulations by boroughs, 195 (1)
- Vacancies in elective offices, filling of, 197
- Warrants for withdrawal of funds, 200, 206
- Witnesses—
 - controller summoning, 200
 - power to compel attendance, 195 (25)
- Zoning—
 - occupation zones prescribed by supervisors, 202
 - planning commission recommendation as to ordinances, 202
 - powers as to, 195 (1)
 - regulations, district for, 195 (1)
 - repeal of ordinances recommended by planning commission, 202

BORROWING MONEY

- Anticipation of income in borrowing, 81
- Bonded indebtedness, repayment of money borrowed for, 81
- First half of fiscal year, time of repayment, 81
- Fiscal year funds as repayment for, 81
- Interest, budget as including, 81
- Notes as security for, 81
- Ordinances authorizing, 81
- Pro rata repayment in case of insufficiency of funds, 81
- Sale of notes securing money borrowed, 81
- Second half of fiscal year, time of repayment, 81
- Temporary loans and transfers, see **Temporary Loans and Transfers**

BOUNDARIES

- Borough, changes, 194
- Extension of, 1
- Institutions outside of, power as to, 2
- San Francisco, boundaries of, 1
- Services outside of, power as to, 2

BRIDGES

- Constructions over \$2000 requiring contracts, 95

BRIEFS

- Keeping, duty as to, 26

BUDGET

- Adoption of, 72
- Appropriation ordinance as based on, 72
- Borough, see **Boroughs**
- California street railroad, 119.4
- Estimate, see **Budget Estimates**
- Increases in salaries at time of, 71
- Interest on borrowed money in, 81
- Mayor's review and submission of, 25
- M. H. De Young museum in, 51

INDEX

BUDGET—Cont'd

Municipal railway unified system, for, 119.1 par 3
Police department compensation in, 35.5.1
Proposed budget—
 additions by supervisors on mayor's request, 72
 capital expenditures additions by supervisors, 72
 city planning report on increases, 72
 decreases by supervisors, 72
 detail published, 72
 hearings—
 adoption after, 72
 fixing of dates for, 72
 increases by supervisors at mayor's request 72
 public improvements additions by supervisors, 72
 rejection of items by supervisors, 72
 transmittal by mayor to supervisors, 72
Salary deduction for emergencies, revision for, 70.1 subd 3
Salary increases determined at adoption of, 71

BUDGET ESTIMATES

Additional data for controller, 69
Amendments, salaries standardization requiring, 151.3
Arrangement for mayor, 69
Blank for, 69
Board of education hearings on, 69
Bond redemption statements submitted with, 69
Capital expenditures, increases by mayor, 69
Capital improvement projects, 69.1
Checking by controller, 69
City planning reporting on increases, 69
Classification of expenditures, uniformity, 70
Consolidation—
 controller performing, 69
 transmittal by mayor to supervisors, 72
Comparison shown by arrangement of, 69
Compensation schedules included in, 70
Controller—
 blanks furnished by, 69
 checking by, 69
 filing with, 69
Debt statements submitted with, 69
Decreases—
 mayor effecting, 69
 reasons stated, 70
Expenditures and revenues compared in arrangement of, 69
Expenditures statement included with, 70
Filing with boards or commissions, 69

BUDGET ESTIMATES—Cont'd

Form of, 70
Hearings on, 69
Increases—
 mayor making, 69
 reasons stated, 70
Information to be included with, 70
Interest statement submitted with, 69
Itemized estimates of expenses included in, 70
Judgment statement included in submission to mayor, 69
Mayor, segregation and transmission to, 69
Number of copies required, 69
Part-time employees recorded on, 151
Police department compensation in, 35.5.1
Positions schedules included in, 70
Proposed work programs schedules included with, 70
Public improvement requests, increases by mayor, 69
Public utilities commission hearings on, 69
Reasons for increases or decreases stated, 70
Recapitulation for mayor, 69
Redemption of bond statement submitted, 69
Referendum, exemption from, 179
Rejection of items by mayor, 69
Revenue statements submitted with, 69
Salary—
 deductions during public emergencies taken, 70.1 subd 3
 increases determined, 71
 schedule of compensations, accord with, 151
 standardization, amendment for, 151.3
Schedule of compensations accord with, 151
Segregation for mayor, 69
Sinking fund statement submitted with, 69
Summary for mayor, 69
Supplemental estimate for appropriations of surpluses, 80
Surplus estimates submitted with, 69
Tax judgment statement included with submission to mayor, 69
Time for, 69
Uniformity required in classification of expenditures, 70
Utility—
 estimates exceeding revenues, approval of, 74
 increases by mayor prohibited, 69
 increases by supervisors prohibited, 72
Work program proposal included with, 70

BUDGET ORDINANCES

Salaries not subject to standardization as fixed by, 71

BUILDING APPLICATIONS

Approval upon modification of, 38
Inspection by bureau of fire prevention and public safety, 38
Report of bureau of fire prevention on, 38

BUILDING PERMITS

Approval of by fire prevention bureau, 38
Issuance upon approval by fire prevention bureau, 38

BUILDINGS

Abatement proceedings, subject to, 38
Art commission approval of designs, 46
Avenues, buildings on, 42
California academy buildings, 52
Construction over \$2000 requiring contract, 95
Harbor buildings—
 lease of, 48
 use assigned, 48
Master plan including intensity recommendations, 116
M. H. De Young memorial museum, 51
Public nuisances, as, 38
Recreation and park—
 commission powers as to, 42
 use restricted, 42
Set-back lines, hearings as to, 117
Squares, buildings on, 42
Tax levies to support, 78

BUREAU HEADS

Appointing officers, as, 20
Checking of purchases, duty of, 20
Requisitions for purchases, power to issue, 20

BUREAU OF CRIMINAL INFORMATION

Director designation of, 35.4

BUREAU OF DELINQUENT REVENUE COLLECTION

Attorney for, 26.1
City attorney's duties in, transfer of, 26.1

BUREAU OF ENGINEERING

Real estate department as including bureau's right-of-way, 61

BUREAU OF FIRE INVESTIGATION

Competitive examinations, positions subject to, 38.01
Investigator—
 establishment of, 38.01

BUREAU OF FIRE INVESTIGATION

Cont'd

Investigator—Cont'd
 lieutenant examination for, 38.01
 salary of, 38.01
Lieutenant—
 additional compensation for, 38.01
 captain examination for, 38.01
 establishment of, 38.01
Military leaves affecting services in, 38.01
Permanent appointment of incumbents in, 38.01
Vacancies subject to competitive examinations, 38.01

BUREAU OF FIRE PREVENTION AND PUBLIC SAFETY

Building applications, examination of, 38
Captain—
 additional compensation for, 38.01
 battalion chief examination for, 38.01
 establishment of, 38.01
 lieutenant eligible for examination for, 38.01
Competitive examinations, positions subject to, 38.01
Creation of, 38
Duties of, 38
Examination of plans and specifications by, 38
Inspections by, 38
Inspector—
 establishment of, 38.01
 lieutenant examination for, 38.01
Inspector, salary of, 38.01
Investigator, salary of, 38.01
Lieutenant—
 additional compensation for, 38.01
 establishment of, 38.01
Military leaves affecting service in, 38.01
Officer in charge of, 38
Permanent appointment of incumbents in, 38.01
Permits, duties to prescribe as to, 38
Personnel for, 38
Plans and specifications examination of, 38
Reports on examination of plans and specifications, 38
Salaries for personnel of, 38, 38.01
Vacancies for personnel of, 38, 38.01
Vacancies subject to competitive examinations, 38.01

BUREAU OF INSPECTORS

Administrative assistant to chief, 35.4
Appointments to, 35.3
Assistant inspectors in, 35.3
Captain, designation by chief of police, 35.4

INDEX

BUREAU OF INSPECTORS—Cont'd

- Chief of inspectors—
 - designation of, 35.4
 - salary of, 35.5
- Competitive examinations for members of, 35.3
- Demotion of members for rule violations, 35.3
- Detail of police department members to, 35.3
- Discipline of inspectors, 35.3
- Punishment for rule violations, 35.3
- Salary of inspectors, 35.5

BUREAU OF PERSONNEL

- Police department, designation of director of, 35.4

BUREAU OF SPECIAL SERVICES

- Director, designation of, 35.4

BUREAU OF SUPPLIES

- Purchasing department as including, 61

BUREAU OF TRAFFIC ENGINEERING AND ADMINISTRATION,

see **Traffic Bureau**

BUREAUS

- Functions, continuance of, 2
- Harbor master establishing, 48

BUSINESSES

- Licenses and permits, see **Licenses and Permits**

C

CABLE CARS

- See also : **California Street Railroad Company**
- Abandonment after unification with municipal railway prohibited, 132.1
- Acquisition of, see **California Street Cable Railroad Company**
- Capital cost of, 119.3
- Land sold for capital cost of, 119.3
- Operation of, 119.3
- Taxation for, 119.3

CALENDAR OF BUSINESS

- Board of supervisors, publishing, 10

CALIFORNIA ACADEMY OF SCIENCES

- Appointing officer for, 52
- Appropriations for, 52
- Approval of building plans of, 52
- Buildings—
 - city property, as, 52
 - approval of, 52
- City employees, positions held by, 52

CALIFORNIA ACADEMY OF SCIENCES—Cont'd

- Civil service applying to employees of, 52
- Employees in building controlled by, 52
- Finance of proposed buildings, statement as to, 52
- Lands for buildings set apart, 52
- Management of buildings by, 52
- Military leaves affecting civil service status, 50, 52
- Morrison Planetarium managed by, 52
- Naming of buildings of, 52
- Natural history museum managed by, 52
- Non-profit corporation, as, 52
- Operations, 52
- Positions in, city employees entitled to, 52
- Recreation and park commission approving building plans of, 52
- Report as to expenses and income, 52
- Seniority affected by military leaves, 52
- Simpson african hall managed by, 52
- Steinhart aquarium managed by, 52
- Trust terms adhered to, 52

CALIFORNIA PALACE OF LEGION OF HONOR

- Accounts, duty of secretary to keep, 50
- Additional trustees for, 50
- Administration in accordance with grant, 50
- Appointments by trustee board, 50
- Bequests to, 50
- Board chairman as ex officio member of art commission, 45
- Compensation, trustees serving without, 50
- Control in accordance with grant, 50
- Curator for, 50
- Devises to, 50
- Director for, 50
- Gifts to, 50
- Insurance of exhibits at, 50
- Mayor as ex officio trustee, 50
- Meetings of trustee board, 50
- Membership of trustee board, 50
- Military leaves affecting service in, 50
- Name as perpetual, 50
- Recreation and park president as ex officio trustee, 50
- Secretary for, 50
- Tax levy for, 50
- Trustee board governing, 50
- Vacancies in trustee board, 50

CALIFORNIA STREET CABLE RAILROAD COMPANY

- Acquisition of, 119.4
- Budget relating to operation of, 119.4

SAN FRANCISCO CHARTER

CALIFORNIA STREET CABLE

RAILROAD COMPANY—Cont'd
Charter sections applicable to acquisition, 119.4

Contract for acquisition of, 119.4
Extension of municipal railway by, 119.4
Franchises transferred to city, 119.4 (c)
Funds for payment provided, 119.4
General funds, payment from, 119.4
Licenses and permits transferred to city, 119.4 (c)
Maximum purchase price, 119.4 (a)
Operating permit cancelled, 119.4 (c)
Permit transferred to city, 119.4 (c)
Properties included in acquisition, 119.4
Public interest and necessity deemed existing, 119.4
Purchase—
 funds provided, 119.4
 maximum price, 119.4 (a)
Title transferred to city, 119.4 (b)
Unified railway system provided by, 119.4

CANCELLATION

Veterans preference credit cancelled upon appointment, 145

CANDIDACY FOR OFFICE

See also: **Elections**
Elector status required, 7
Residence required, 7

CAPITAL IMPROVEMENTS

Generally, see **Public Works and Improvements**

CAPTAIN OF TRAFFIC

Designation of, 35.4
Salary of, 35.5

CASH RESERVE FUND

Creation of, 80
Expenses prior to tax payments, use for, 81
Increase by tax levy, 81
Maximum amount of, 81
Tax levy for, 81
Temporary transfers or loans for, 81
Transfers to, 80
Uses authorized, 81

CASH TRANSACTIONS

Accounts and procedure showing, 64

CENTRAL GARAGE

Garages transferred to, 88
Purchasing department as operating, 61, 88

CENTRAL STORES

Purchasing department as operating, 61, 88

CERTIFICATIONS

Appropriations and balances by controller, 86
Contracts, sufficient balances for, 88
Declaration of candidacy, 175
Employees, see **Civil Service Appointments**
Payrolls, 150
Prior certification being valid, 17
Purchase orders, sufficient balances for, 88
Recording of by controller, 86
Streets, city engineers and certificate as to, 108
Surplus property purchases, funds for, 88.1

CERTIFIED PUBLIC ACCOUNTANT

Controller's books audited by, 68

CHANNEL OF AUTHORITY

Duty to follow, 22

CHARITY

City receiving property for, 2

CHARTER

Administration in accordance with, necessity of, 22
Adoption declared, 226
Amendment—
 petitions, filing and delivering, 183
 propositions, cost statement by controller, 183
Captions, significance of, 225
Definition of for retirement, 165.2(A), 168.1.1, 171.1.1
Digest of decisions in publication of, 17
Headings, significance of, 225
Initiative ordinances in publication of, 17
Legislative declaration as to, 226
Market street railway acquisition provision as prevailing, 119.1 par 5
Publication of, 17
Public works procedure governed by, 107
Ratification declared, 226
Saving clause, 226
State law as controlling in absence of provision, 3
Unconstitutionality of portions, effect of, 226
Zoning provisions affected by new comprehensive ordinance, 117

CHIEF ADMINISTRATIVE OFFICER

Abolishment of departments recommended by, 9
Administration, responsibility for, 60
Advisory boards appointed by, 60
Allocation of functions among departments, 61

INDEX

CHIEF ADMIN. OFFICER—Cont'd

Appointees as department heads, 20
Appointing officer for California Academy of Sciences, as, 52
Appointment of, 59
Board members appointed by, 60
Board of supervisors—
 removal by, 59
 responsibility to, 60
 voice in, 60
Budget estimates required from departments, 69
City officer, status as, 4
Combination of department functions by, 20
Continuance of powers and duties of, 23
Contracts for expenditures approved by, 88, 95
Controller's reports sent to, 65
Control of department by, 60
County office not mentioned in charter, designating officer for, 60
Creation of departments as recommended by, 9
Dealing solely with, 22
Department affairs, power to investigate, 21
Department head, as, 20—
 appointment of, 60
 responsibility, 20
Director of health appointed by, 61
Director of public works appointed by, 106
Discussions before board of supervisors, 60
Emergency reserve fund appropriations approved by, 79
Finance and records director appointed by, 61
First appointment, 59
Health advisory board appointed by, 61
Hearing for removal of, 59
Interference with prohibited, 22
Investigation of department affairs, power as to, 21
Joint approval as to contracts with purchaser of supplies, 95
Mayor—
 appointing, 59
 responsibility to, 60
Officer of city, status as, 4
Planning Commission, ex officio member of, 115
Public health director appointed by, 61
Public works costs reported to, 95
Public works director appointed by, 61
Purchase orders over \$2000 approved by, 88

CHIEF ADMIN. OFFICER—Cont'd

Purchaser of supplies appointed by, 61
Qualifications of, 59
Recall of, procedure for, 179
Recommendations by, 60
Recorder functioning as registrar of voters, designation of, 60
Reports to board of supervisors, 60
Resident of state, as, 59
Rules and regulations by, 60
Special assessment project bonds recommended by, 110
Supervision of department by, 60
Traffic control coordination by, 60
Transfer of department functions by, 20
Unencumbered balances transfers recommended by, 77

CHIEF EXECUTIVE

City officer, status as, 4
Dealing solely through, 22
Director of public welfare as, 61.1 subd 6
Librarian as, 43
Mayor as, 25
Officer of city, status as, 4
Recreation department, general manager as, 41

CHIEF OF POLICE

See **Police Department**

CITIZENS' EMERGENCY RELIEF COMMITTEE

Civil service examination for, 61.1 subd 7
Credit for prior service in, 61.1, subd 7
Incumbents continuing positions in, 61.1 subd 7
Public welfare exercising functions of, 61.1 subd 8
Transfers of functions to public welfare, 61.1 subd 7

CITIZENSHIP

Employees required to have, 7
Public works contract, workers under, 98
Utilities position dependent upon, 125

CITY AND COUNTY

Generally, see **San Francisco**
Rights and Powers, San Francisco having, 2

CITY ATTORNEY

Actions, duties as to, 26
Advice, duty to give, 26
Appointment and removal of assistants and employees, 26
Assistants, 26, 34, 34.1
Bureau of delinquent revenue collection duties, transfer of, 26.1

SAN FRANCISCO CHARTER

CITY ATTORNEY—Cont'd

Civil service applicable to employees of, 34.1
Contracts, preparation of, 26
Dismissal of actions, limitation upon, 26
Elective officer, as, 5, 26
Elector status of, 26
Entire time devoted to office, 26
Files, keeping of, 26
Harbor commission, advisor to, 48
Initiative, referendum and recall statements prepared by, 184
Law practice qualification, 26
Military leave affecting employees of, 34.1
Municipal courts reports filed with, 54
Municipal election for, 5
Official bond of, 26
Official bonds approved by, 26
Opinion, duty to give, 26
Ordinances, preparation or approval by, 26
Qualifications of, generally, 26
Real property titles examined and approved by, 26
Representation of city and officers, 26
Retirement board membership of, 159
Salary of, 26, 151.1
Term of, 5

CITY ENGINEER

Appointment of, 106
Mains for sewers, water, gas, recommended by, 112
Powers as given by law, 106
Streets, certification as to, 108
Surveys, plats and certificates, powers as to, 106
Validity of acts, etc., as provided by general law, 106

CITY PLANNERS

Planning commission contracts with, 116

CITY PLANNING COMMISSION

Additional members not affecting present commission, 115
Appeals from zoning change decisions by, 117, 117.1
Appointment by mayor, 115
Approval, failure to act as, 117.1
Blighted areas project plans as considered by, 118
Changes in zoning made on own motion, 117
Chief administrative officer as ex officio member, 115
Compensation of members, 115
Contracts with architects, etc., 116
Director of planning appointed by, 116

CITY PLANNING COMM'N—Cont'd

Ex officio member of art commission, chairman as, 45
Housing project plans, recommendations on, 118
Licenses and permits approved by, 24
Master plan, see **Master Plan**
Mayor appointing members of, 49
Membership of, 115
Notice of zoning hearings as given by, 117.1
Ordinances submitted to, 117
Secretary appointed by, 116
Set-back lines, hearings as to, 117
Slum clearance project plans, recommendations on, 118
Subdivision plats, etc., recommendations upon, 118
Terms of office, 49, 115
Time limit for change action, 117.1
Zoning change hearings, 117, 117.1

CITY PLANNING DEPARTMENT

Acquisitions, additional projects recommended by, 69.1
Additional capital improvements recommendations, 69.1
Advisory capacity, serving as, 116
Blighted areas project plans submitted to, 118
Budget estimates for improvement increases, reporting on, 69
Budget items reports by, 72
Capital improvement projects—
governing provisions as to, 116
schedules filed with commission, 69.1
Commission, see **City Planning Commission**
Director, see **Director of Planning**
Establishment of, 115
Housing plans submitted to, 118
Information—
from, duty to furnish, 116
to, duty to furnish, 116
Master plan, see **Master Plan**
Ordinances affecting public ways and buildings, reporting on, 116.1
Personnel for, 115
Planning commission, see **City Planning Commission**
Powers necessary for functions, 116
Reports recommending capital improvement programs, 69.1
Resolutions affecting public ways and buildings, reporting on, 116.1
Slum clearance plans submitted to, 118
Subdivision plats, replats, project plans submitted to, 118
Zoning administration, in, see **Zoning**

CITY SERVICES

Fees for, recommendations as to, 20

CIVIC AUDITORIUM

Director of property in charge of, 91

Real estate department as managing, 61

CIVILIAN DEFENSE WORKERS

Injuries to, care and compensation for, 9

CIVIL SERVICE

Additional positions, creation of, 143

Adult probation officer employees continued under, 58

Air corps included for preference purpose, 145.01

Airport employees deemed under, 125

Appointments, see **Civil Service Appointments**

Attorneys included or excepted from, 26.1, 34.1, 142

Blind persons, provisions as to, 145.02

Borough, see **Boroughs**

Cafeteria employees subject to, 135.1

California academy employees as subject to, 52

California palace employees deemed appointed under, 50

City attorney's employees subject to, 34.1

Classification, see **Classification of Employment**

Commission, see **Civil Service Commission**

Continuance of former charter rights, 142

County accountant deemed appointed under, 63

Creation of positions in, 143

Department heads subject to, 62

Director of public welfare excluded from, 61.1 subd 6

District attorney employees subject to, 34.1

Double employment deemed vacation of office, 142

Election personnel subject to, 173

Elective offices made appointive as subject to, 62

Eligibles, see **Eligibles List**

Examination, see **Civil Service Examinations**

Exceptions and exemptions—

generally, 19 (h), 142

meaning of, 221

Exempted persons made subject to, 62

Fitness as basis of appointment, 140, 141

Harbor—

department and bureau heads exempt from, 48

employees subject to, 48.1

CIVIL SERVICE—Cont'd

Health service employees subject to, 172.1 subd 3

Incumbents subject to, 62, 142

Inmate help excepted from, 142

Leased utilities employees subject to, 125.1

Legal action for violation of provisions, 141

Legislature membership deemed vacation of office, 142

Library department subject to, 43

Merit as basis of appointment, 140, 141

M. H. De Young museum employees subject to, 51

Municipal court appointees subject to, 55

Other employment deemed vacation of office, 142

Outside employment excepted from, 142

Part-time services excepted from, 142

Physicians excepted from, 142

Planning commission secretary exempt from, 116

Positions—

appropriation ordinances creating, 143

creation of, 143

designated, 142

unemployment relief, for, 149

Previously exempt office heads as subject to, 62

Probation, see **Civil Service Appointments**

Probation personnel subject to, 58

Professional temporary services excepted from, 142

Public defender employees subject to, 34.1

Public welfare employees subject to, 61.1 subd 7

Recreation and park department rights in, 41

Rules for provisions of, 141

Salvage corps personnel subject to, 38.1

School positions as subject to, 135

State employment deemed vacation of office, 142

Student nurses excepted from, 142

Tax levies for, 78

Tests, see **Civil Service Examinations**

United States employment deemed vacation of office, 142

Utilities—

appointment and removals exclusive of, 124

employees deemed appointed under, 125, 125.1

Zoning administrator, appointed under, 117.2

CIVIL SERVICE APPOINTMENTS

Appeals by promotional appointees, 148

CIVIL SERV. APPOINTMENTS—

- Cont'd
- Certification—
 - eligibles list, from, 148
 - military service, names reached during, 153
- Dismissal upon termination during probation, 148
- Duration probable, notice of, 148
- Eligibles list, see **Eligibles List**
- Emergency appointment—
 - absence of eligibles as occasion for, 149
 - no eligible list as occasion for, 149
 - non-civil service, see **Non-Civil Service Appointments**
 - unemployment relief, 149
- Immediate service, appointments for, 149
- Inquiry as to termination during probation, 148
- Limited tenure, see **Limited Tenure Appointments**
- Merit and Fitness as basis, 140
- Military service, appointment after, 153
- Notice to candidates as to character of, 148
- Permanent—
 - characteristics, notice of, 148
 - recommendations by appointing officer, 148
- Probations—
 - competency reported before expiration, 148
 - period, 148
 - termination by appointing officer during, 148
 - veterans required to serve, 153
- Re-instatement after appeals, 148
- Requisitions for, 148
- Return to original position after termination of promotional appointment, 148
- Salary payments upon reinstatement after appeal, 148
- Seasonal character, notification of, 148
- Sex disregarded, 148
- Temporary appointments—
 - absence of eligibles as occasion for, 149
 - compensation, time limit upon, 149
 - non-civil service, see **Non-civil Service Appointments**
 - other eligibles list furnishing, 149
- Temporary character, notification of, 148
- Termination of during probation period, 148
- Waiver of temporary or seasonal employment, 148

CIVIL SERVICE COMMISSION

- Allocations by, 141
- Appeals to, 154

CIVIL SERV. COMMISSION—Cont'd

- Authorization to live outside of city as filed with, 7
- Charges, notice of, 154
- Classifications by—
 - places of employment, 141
 - positions, 141
- Class titles and numbers assigned by, use of, 141
- Continuance of incumbents in office, 140
- Declaration of members, 140
- Duty to provide qualified persons, 140
- Eligible list determined by, 145
- Employment and personnel department, as, 141
- Errors in rating corrected by, 147.1
- Establishment of, 140
- Examinations controlled by, 145
- Findings against employees, notification of, 154
- Fitness as basis of appointment by, 140, 141
- Hearings—
 - notice of, 154
 - right to, 140
- Inquiries as to termination during probation, 148
- Investigation into conduct of appointees, 152
- Leaves of absence governed by, 153
- Legal actions by, 141
- Legality check as to positions and rates, 73
- Limited tenure appointment, function as to, 145.1
- Mayor appointing, 49, 140
- Meetings as open to public, 140
- Membership of, 140
- Merit as basis of appointment by, 140, 141
- Need for positions indicated by, 143
- Notices—
 - affecting positions, 143
 - charges against employees, 154
- Number of members, 140
- Oaths, declaration under, 140
- Ordinances affecting positions filed with, 143
- Payroll approval by, 150
- Personnel department, as, 141
- Qualified persons, duty of providing, 140
- Recommendations as to salary standardization, 151
- Removal of members, 11, 140
- Rules—
 - adopted by, 141
 - changes in, 141
- Salary standardization, function in, 151, 151.1, 151.3
- Salaries of members, 140

INDEX

CIVIL SERV. COMMISSION—Cont'd

- Schedule of compensations prepared by, 151
- Secretary as certifying and examining, 141
- Surveys for salaries standardization, 151
- Suspension of members, 11
- Terminations during probation, inquiry as to, 148
- Terms of office, 49
- Transfer of disabled, rules as to, 156
- Unemployment emergency, powers as to exemption during, 149

CIVIL SERVICE EXAMINATIONS

- Adequacy, commission as judge of, 145
- Advertising of, 144
- Appropriation for immediate examination, 149
- Army, definition for veterans preference, 145.01
- Blind persons qualifying for, 145.02
- Charge, given without, 145
- Citizens' emergency relief committee positions filled by, 61.1 subd 7
- Citizens having right to take, 144
- Coast guard included for preference purpose, 145.01
- Collusion prohibited, 147
- Competitive tests required, 145
- Completion after military service, 153
- Credit for prior service in citizens' emergency relief committee, 61.1 subd 7
- Defeat of right prohibited, 147
- Disabled veterans, preference to, 145
- Eligible list prepared after, 145
- Emergency examination for permanent appointment list, 149
- Entrance, veterans preference in, 145
- Errors in rating, correction of, 147.1
- Examination of papers open to public, 147.1
- Exemptions during unemployment emergency, 149
- Falseness prohibited, 147
- Fees for examination of papers after, 147.1
- Fire department applicants, requirements for, 145
- Fire investigation bureau subject to, 38.01
- Fire prevention bureau subject to, 38.01
- Fitness determined by, 141
- Fraternal affiliation questions prohibited, 145
- Fraud prohibited, 147
- Immediate examination for permanent appointment list, 149
- Inspection of papers permitted, 147.1
- Inspectors in bureau of inspectors entitled to, 35.3

CIVIL SERV. EXAMINATIONS—

- Cont'd
- Interruption due to military service, effect of, 153
- Laborers, standards for, 145
- Marine corps, definition for preference purpose, 145.01
- Mechanical occupations applicants, qualifications of, 145
- Meetings for consideration not open to public, 140
- Merit and fitness established by, 140, 141
- Military service—
 - completion after, 153
 - credit for, 145
- Navy, definition for preference purposes, 145.01
- Notice of, 144
- Obstructions prohibited, 147
- Passing marks determined by commission, 145
- Police department applicants, requirements of, 145
- Political questions prohibited, 145
- Promotional examinations—
 - competitive tests required, 145
 - fire department, see **Fire Department**
 - military leaves, after, see *infra*, **Substitute promotional examinations**
 - notification of, 144
 - others, after substitute promotional, 146.1
 - police, see **Police Department**
 - scope circular announcing ranks, 146
 - substitute, see *infra* **Substitute promotional examinations** two or more persons required for, 145
 - veterans right and preference, 145, 153
 - widows of veterans, preference, 145
- Public inspection of papers, 147.1
- Re-examination of papers, 147.1
- Religious questions prohibited, 145
- Right to take, 144
- Secret informations prohibited, 147
- Similar, after military leaves, 146.1
- Single applicant, for, 145
- Special information prohibited, 147
- Substitute promotional examinations, 146.1
- Tests—
 - adequacy, commission as judge of, 145
 - competitive tests required, 145
 - nature of, 145
 - practical in nature, 145
 - two or more persons required for, 145
 - war time appointments, for, 145.1
- "Time of war," for preference purposes, 145.01
- Unemployment emergency justifying exemptions from, 149

CIVIL SERV. EXAMINATIONS—

Cont'd

Veterans preference for exams, 145
War time appointment, tests for, 145.1
Widows of veterans, preference, 145

CLAIMS

Amount as included in damage claims, 87
Audit by controller, 85
Bills in support of, 85
Damage claims presented to controller within 60 days, 87
Date and place as included in damage claims, 87
Disapproval of by controller, 85
District attorney's special fund, payments from, 29
Errors in, action by controller, 85
Illegal claims, liability on bond for, 86
Insufficient balance precluding payment of, 85
Investigation by controller, 85
Invoices in support of, 85
Items included in damage claims, 87
Name and address included in damage claims, 87
Personal services, see **Payrolls**
Preparation by responsible official, 85
Purchases of materials, approval of, 20
Registration of unpaid claims awaiting income, 85
Return by controller's disapproval, 85
Signature by responsible official, 85
Utilities claims adjusted by commission, 130
Verification of damage claims, 87
Voidance for non-compliance with charter, 86
Warrants drawn by controller for, 85

**CLASSIFICATION OF
EMPLOYMENT**

Blind persons considered in, 145.02
Civil service commission establishing, 141
Class titles and numbers, use of, 141
Municipal railway standardized wages paid according to, 151.3 (D)
Outside of classification, prohibition as to holding, 141
Salaries and wages based on, 151
Temporary appointments outside of, 141

**CLEARING HOUSE
REPRESENTATIVE**

Board of supervisors providing for, 84

**CLERK OF BOARD OF
SUPERVISORS**

Appeals from zoning change decisions set by, 117.1

**CLERK OF BOARD OF
SUPERVISORS—Cont'd**

Appointing officer of personnel, clerk as, 12
Appointment of, 12
Appropriation items effective without mayor's approval, noting of, 14
Authority of, 12
Board of equalization, ex officio clerk of, 12
Certification of ordinances and resolutions, 15
Charter amendment propositions filed with and delivered to controller, 183
Confirmation of incumbent in position of, 12
Continuance in office under civil service provisions, 12
Copies of proposed ordinances kept for inspection, 13
Declaration of franchise surrenders filed with, 131
Designation as clerk of board of supervisors, 12
Duties of, 12
Ex officio clerk of board of equalization, 12
Failure of mayor to return measures, duty to note, 14
Files of ordinances and resolutions, responsibility for, 12
Index of ordinances and resolutions, responsibility for, 12
Initiative referendum and recall measures filed with and submitted to controller, 183
Journal of proceedings kept by, 12
Office of board in charge of, 12
Ordinances creating or abolishing positions filed with civil service commission by, 143
Ordinances transmitted to mayor by, 14
Personnel in charge of, 12
Proposed ordinances for inspection in office of, 13
Recording of measures passed, 15
Records in charge of, 12
Resolutions transmitted to mayor by, 14
Responsibilities of, 12
Return of ordinances and resolutions to, 14
Street railway franchise surrenders filed with, 131
Transmittal of ordinances and resolutions to mayor by, 14

CLERK OF MUNICIPAL COURT

Appointment by judges, 55
City officer as, 4

INDEX

CLERK OF MUN. COURT—Cont'd

- Law library fee collection, 57
- Report of court business submitted by, 54

COAST GUARD

- Veterans preference in examinations, 145.01

CODIFICATION

- Board of supervisors' power as to, 17
- Certification of correctness, 17
- Correctness as certified to, 17
- Enforcement by ordinance, 17
- Ordinances, codification of, 17
- Prior codification being valid, 17

COLD STORAGE PLANTS

- Harbor commission regulating, 48

COLLECTIVE BARGAINING AGREEMENTS

- Salaries according to, see **Salary standardization**
- Vacation right affected by, 151.5 (a)

COLLUSION

- Civil service examinations, prohibited, 147
- Contracts with city, penalties for collusion as to, 100

COMBUSTIBLE MATERIALS

- Fire marshal enforcing laws as to, 37

COMMERCE

- Harbor commission regulating facilities used in, 48

COMMISSIONS

- Additional powers conferred by supervisors, 9
- Administrative heads of, 19 (h)
- Appointments to by mayor, 25
- Attendance, compelling of, 19
- Bequests, powers and duties as to, 19 (d)
- Bonds of officers and employees of, 19 (i)
- Budget estimates filed and acted upon, 69
- Capital improvements projects, reports and recommendations, 69.1
- Charter, duty to follow in administration, 22
- Chief executive officer as officer of city, 4
- City officers, members as, 4
- Combination of department functions by, 20
- Continuance of powers and duties of, 2, 23
- Dealing solely through, 22
- Department affairs, power to investigate, 21
- Department head, chief executive as, 20

COMMISSIONS—Cont'd

- Department heads responsible to, 20
- Devises, powers and duties as to, 19 (d)
- Duties of, generally, 19 (a)
- Employment in firms regulated by, prohibited, 222
- Gifts, duties as to, 19 (d)
- Harbor commission having powers and duties of, generally, 48
- Interference with prohibited, 22
- Investigation of department affairs, power of, 21
- Investment of trust funds by, 82
- Majority vote, definition of, 19
- Mayor having seat in, 25
- Meetings of, generally, 19 (f)
- Members as city officers, 4
- Officers of city, members as, 4
- Official bonds of officers and employees, 19 (i)
- Powers of, generally, 9, 19 (a)
- Publication of rules and regulations of, 19 (a)
- Quorum, majority as being, 19
- Record of meetings, 19
- Residence required during term, 7
- Retired persons excluded as members, 163 (a), 165.2 (j), 168.1.12, 171.1.12
- Retirement provisions excluding members of, 158
- Rules and regulations for, 19 (a)
- Salaries recommendations by, 71
- Salary standardization, exception from, 151.1
- Secretaries of, 19 (h)
- Special committees, provision for, 19 (c)
- Special meetings of, 19 (g)
- Standing committee, provision for, 19 (c)
- Superintendents of, 19 (h)
- Temporary transfers or loans approved by, 81
- Transfer of department functions by, 20
- Trustees of gifts for city, performance of, 19 (d)
- Voting power of mayor in, 25

COMPENSATION

- See **Salaries and Wages**

COMPENSATION EARNABLE

- Death benefits consisting of, 165.2 (E)
- Definition of, 165.2 (A)
- Fire department "rates of compensation" as meaning, 36.2
- Police department compensation defined, 35.5.1

COMPLAINTS

- Mayor's duties as to, 25

COMPLAINTS AT LAW

- Criminal, warrant and bond deputy drawing, 30
- District attorney's duty to draw, 29

CONDEMNATION

- Appraisals for acquisitions of property by, 91
- Director of property assisting in proceedings for, 91

CONFLAGRATION

- Building removals for checking progress of, 36
- Hours of work during, 36

CONSOLIDATION (San Francisco-San Mateo Counties)

- Assessor's office as branch following, 189
- Auditor's office as branch following, 189
- Boroughs resulting, see **Boroughs**
- Branch offices in consolidated territory as established, 189
- Budget estimates, 69
- City and county, meaning of, 188
- City, meaning of, 188
- Civil service status of county employees without examination, 189
- Conflicting charter provisions superseded, 187
- Consolidate, meaning of, 188
- Consolidation, meaning of, 188
- Continuance of incumbents as deputies, 189
- Coroner's office as branch following, 189
- County clerk office as branch following, 189
- County, meaning of, 188
- Court business transferred upon, 191
- Definitions of term, 188
- Deputies officers in consolidated county becoming, 189
- District attorney office as branch following, 189
- Effective date of charter provisions as to, 187
- Firemen, retirement credit for prior service, 190
- Governmental agency, meaning of, 188
- Incumbents in consolidated county—
 - civil service status without examination, 189
 - deputies, continuance as, 189
 - employees, becoming, 189
- Municipal court, transfer of business to, 181
- Policemen, retirement credit for prior service, 190
- Recorder's office as branch following, 189

CONSOLIDATION (SF-SM)—Cont'd

- Recording of title instruments of consolidated county, 192
- Recreation and park department, 40
- Services continued by branch offices, 189
- Sheriff's office as branch following, 189
- Superseding of conflicting charter provisions, 189
- Tax collector's office as branch following, 189
- Title instruments in consolidated county, recording of, 192
- Treasurer's office as branch following, 189
- Voter, meaning of, 188

CONSTITUTION

- Municipal court governed by, 53

CONTEMPT

- Investigation of departments, contempt of proceeding for, 21

CONTINGENT FUND

- Chief of police as having, 35.8

CONTINUANCE

- Airport employees in positions, 125
- Attorney for delinquent revenue collection, 26.1
- Citizens' emergency relief positions, 61.1 subd 7
- Civil service—
 - commission members in office, 140
 - rights acquired under former charter, 142
- Compensation, 2
- Contract rights and liabilities, 2
- Director of zoo, position, 41
- Employees in positions, 2
- Fire department—
 - pension after January 8, 1932, 170
 - positions, 36
- Fire prevention and public safety positions, 38.01
- Functions of city and county, 2
- Harbor commission employees, positions, 48.1
- Health service employees after military leaves, 172.1
- Incumbents continued and deemed appointed, 142
- Law library board of trustees, 57
- Officers in positions, 2
- Ordinances, 2
- Park department and commission functions, 40
- Planning commissioners, 115
- Police commissioners, 35

INDEX

CONTINUANCE—Cont'd

- Police department—
 - pension after January 8, 1932, 167
 - positions in, 35.2
- Powers and duties of officers and boards, 2
- Property, rights and titles to, 2
- Recreation department and commission functions, 40
- Resolutions, 2
- Salaries of incumbents higher than standard fixed, 151
- School cafeteria employees positions, 135.1
- Secretary, recreation commission, 41
- Superintendent—
 - parks, 41
 - recreation, 41
- Torts, liability and rights, 2
- Underwriters fire patrol positions, 38.1
- Utilities employees, positions, 125, 125.1

CONTRACTS

- Acceptance of work as provided by ordinance, 99
- Accounts showing amounts of, 76
- Act of god delaying performance, 97
- Allotments affecting controller's certification, 72
- Allowances for price of locally manufactured products, 98
- Average use record as basis for, 89
- Award of as provided by ordinance, 99
- Bids on, see **Bids**
- Bonds for performance as provided by ordinance, 97, 99
- Borough, see **Boroughs**
- California street railroad company acquisition, 119.4
- Chief administrative officer approving over \$2000, 88
- Citizenship of workers under public works contracts, 98
- City attorney's duty to prepare, 26
- Collusion, penalties for, 100
- Completion time as provision of, 97
- Continuance of rights and obligations, 2
- Construction projects over \$2000 requiring, 95
- Controller to determine whether city works to be done under, 64
- Cost per unit contracts on public works, 97
- Department heads power to sign, 95
- Drafts prepared by city attorney, 26
- Extension of time for public works, 97
- Funds necessary, 88
- Gross price contracts on public works, 97
- Harbor commissioner as making, 48
- Interest in as prohibited, 222

CONTRACTS—Cont'd

- Interference with prohibited, 22
- Liquidated damages provisions in, 97
- Modification of works under, 97
- Ordinances, procedure established by, 99
- Personal services, payment for, 150
- Preferences for locally manufactured goods, 98
- Preferential treatments, penalties as to, 100
- Preparation by city attorney, 26
- Progressive payment authorized, 96
- Purchaser's record of average use as basis for, 89
- Purchases over \$1000, 88
 - \$2000 purchases, 95
- Requisitions as basis for, 89
- Security for performance as provided by ordinance, 99
- Splitting project to avoid making, official misconduct, 95
- Time limits for completion as fixed in, 97
- Time of completion as basis for awards, 97
- Unencumbered balances as requisite to making, 88
- Working hours under public works contracts, 98

CONTROLLER

- Accounts—
 - general supervision over, 64
 - keeping of, 64
- Allotments schedules by, 72
- Appointment by mayor, 63
- Appropriation—
 - monthly reports, 65
 - ordinance drafting, 72
- Audit of controller's books by certified public accountant, 68
- Auditor, as, 64
- Audits by, 66
- Bids, awarding where purchaser and department heads differ, 88
- Board of supervisors, report copies sent to, 65
- Bonded indebtedness statement by, 183
- Bond of, 8
- Borough, see **Boroughs**
- Borrowing money as recommended by, 81
- Budget estimate—
 - blanks, furnishing of, 69
 - estimates, checking of, 69
- Cable car fund certified by, 119.3
- California palace of legion of honor report to, 50
- Capital improvement programs recommendations to, 69.1
- Cash position reports of, 65

SAN FRANCISCO CHARTER

CONTROLLER—Cont'd

Certifications requisite to incurring obligations, 86
Charter amendment petitions delivered to, 183
Chief accounting officer, as, 64
Chief administrative officer, report copies sent to, 65
Claims audited by, 85
Clearing house representative recommended by, 84
Confirmation by board of supervisors, 63
Consolidation of budget estimates by, 69
County auditor, powers and duties of, 64
Damage claims presented to within 60 days, 87
Department affairs, power to investigate, 21
Department head, as, 20
Duties of county auditor, having, 64
Emergencies, reallocations to meet, 70.1 subd 6
Expenditures accounts, appropriation ordinance as authority for, 72
Health service funds, powers as to, 172.1 subd 4
Health service payments deducted by, 172.1 subd 4
Initiative referendum and recall—
cost statement as to, 183
petitions delivered to, 183
Inter-departmental services, payment method prescribed, 77
Internal check systems devised by, 64
Investigation of department affairs, power of, 21
Investment of trust funds approved by, 82
Joint custody safe opened in presence of, 83
Legality check as to positions and rates, salary ordinance as legal base for, 73
Mayor appointing, 63
M. H. De Young museum report to, 51
Monthly reports of, 65
Official bonds—
amounts approval of, 19 (i)
controller's bond, 8
examination of, 67
Payrolls transmitted to, 150
Petty cash funds audited by, 75
Planning department reports received by, 116.1
Public works accounts reported to, 95
Quarterly reports for funds, 65
Reallocations of money to meet emergency, 70.1 subd 6
Recall of, procedure for, 179
Record of items deposited with in joint custody safe, 83

CONTROLLER—Cont'd

Request, audit by, 66
Removal by supervisors, 63
Revenue accounts, appropriation ordinance as authority for, 72
Revolving funds audited by, 66, 75
Safe, joint custody, opening of, 83
Salary of, 63, 151.1
Schedule of allotments by, 72
Surplus property purchased by, 88.1
Treasurer's accounts audited by, 66
Unit cost, duty to determine, 64
Warrants drawn for payment of claims, 85

CO-OPERATION

Traffic bureau and other departments and agencies, 35

CORONER'S OFFICE

Generally, 61
City officer, coroner as, 4
Functions included in, 61
Officer of city, coroner as, 4
Personnel included in, 61

COST

Annual report of departments to mayor, 19 (e)
Examination as to department cost, 21

COUNTY

Rights and powers, San Francisco having, 2

COUNTY ACCOUNTANT

Auditor deemed appointed as, 63
Civil service as applicable to, 63

COUNTY AGRICULTURAL DEPT.

Administration of, 61
State law functions included in, 61

COUNTY CLERK

Bond of, 8
City officer, status as, 4
Finance and records department, inclusion in, 61
Law library fees, collection of, 57
Officer of city, status as, 4

COUNTY OFFICERS

Duties of, generally, 18
Powers of, generally, 18

COUNTY OFFICES UNDESIGNATED

Officer appointed for, 60

COUNTY WELFARE DEPT.

Transfer to public welfare department, 61.1 subd 7

INDEX

COURTS

City and county as party, 2
Municipal, see **Municipal Courts**
Superior, see **Superior Courts**

CRIMES

Appointees, removal on conviction, 11
Arrest warrants issued by district attorney, 29
Discharge of person accused of, 30
District attorney prosecuting, 29
Licenses and permits for business affecting conditions, 24
Misdemeanor, see **Misdemeanors**
Removal upon conviction of, 11
Weapons used in, disposal of, 35.12

CUSTODY OF MONEYS AND SECURITIES

Generally, 83

D

DAYS OFF

Bus operators, 125
Fire department members entitled to, 36, 36.1 (b)
Platform employees, 125
Police department, 35.5½, 35.5½ (e)
Working on, by fire department, 36, 36.1 (c)

DEATH

Audit of accounts upon, 66
Firemen, injury, see **Death From Injury (Police or Fire Duty)**
Natural death of policemen and firemen, benefits upon, 166 (e), 169 (c)
Policemen, injury, see **Death from Injury (Police or Fire Duty)**
Vacancy in office by, 6

DEATH FROM INJURY (Police or Fire Duty)

Children entitled to allowance, 168.1.4, 168.3, 171.1.4
Contributions by city for, 168.3
Death allowance—
amount of, 168.1.4, 168.3, 171.1.4
children receiving, 168.1.4, 168.3, 171.1.4
retired person, death of, 168.1.4, 171.1.4
workmen's compensation as reducing, 168.1.6, 171.1.6
Exclusiveness of provisions as to, 168.3
Fire boat personnel, 168.3
Fire department member—
child taking pension on widow's death, 169 (b)
no widow, children's benefits in event of, 169 (b)

DEATH FROM INJURY (Police or Fire Duty)—Cont'd

Fire department member—Cont'd
parents' pension where no widow, no children, 169 (b)
sickness caused by duty, death from, 169 (b)
widow's pension, 169 (b)
Marriage on date required for widows' allowance, 168.1.4, 168.3, 171.1.4
Outside of city, retirement provisions covering, 162, 168.1.1., 171.1.1
Parents, death allowance to, 168.1.4, 168.3, 171.1.4
Police member—
child taking pension on widows death, 166 (b)
death within three years, 166 (c)
life, pension during as no bar to family benefits, 166 (c)
no widow, children's benefits in event of, 166 (c)
parents pension where no widow, no children, 166 (c)
widow's pension, 166 (c)
Prior retirement affecting allowance, 168.1.4, 171.1.4
Retired person, death allowance, 168.1.4, 171.1.4
Retirement system applicable to, 162
Salvage corps members, 168.3
Widows allowance, marriage on injury date required, 168.1.4, 168.3, 171.1.4

DEBT

Budget submission including statement of, 69

DEBT LIMIT

Bonded, see **Bonded Indebtedness**

DELINQUENCIES

Assessment delinquencies notified to tax collector, 107

DENTIST

Health advisory board, membership, 61

DEPARTMENTAL REVOLVING FUND

See **Revolving Funds**

DEPARTMENT CHIEF EXECUTIVES

Department heads, as, 20

DEPARTMENT HEADS

Annual reports, duty to make, 30
Application for outside residence filed with, 7
Appointive heads responsible to chief administrative officer, 20
Appointment by chief administrative officer, 60

SAN FRANCISCO CHARTER

DEPARTMENT HEADS—Cont'd

Bids rejected by, 95
Checking of purchases, duty of, 20
Chief administrative officer, responsibility to, 20
City officer, status as, 4
Civil service as applicable to, 62
Combination of functions, recommendations as to, 20
Creation of positions, recommendations as to, 20
Elective officers having powers of, 20
Estimates, duty to make, 20
Fees for city services, recommendations as to, 20
Interference with prohibited, 22
Objections to application for outside residence, 7
Officer of city, status as, 4
Operations outside city, purchases made by, 88
Orders, publication of, 19 (a)
Ordinances, recommendations as to, 20
Powers of, generally, 20
Purchases by, generally, 88
Reduction in forces, power as to, 20
Rejection of bids, 95
Reports, duty to make, 20
Requisitions for purchases, duty as to, 20
Salaries and wages fixed by, 151
Superintendent of schools having powers and duties of, 136
Transfer of functions, recommendations as to, 20
Utilities departments, appointment and removal, 124

DEPARTMENT OF CITY PLANNING

See **City Planning Department**

DEPARTMENT OF ELECTRICITY

Chief of department as administering, 61
Functions included in, 61
Joint commission, abolishment of, 61
Personnel included in, 61

DEPARTMENT OF PROPERTY

Director of property in charge of, 91

DEPARTMENT OF WEIGHTS AND MEASURES

Sealer of weights functions included in, 61

DEPARTMENTS

Abolishment of, 9
Accounts investigation of, 21
Agricultural, see **County Agricultural Department**
Allocation of functions among, 61
Budget estimates required of, 69

DEPARTMENTS—Cont'd

Combination of functions and duties, 20
Continuance of powers and duties, 23
Control by chief administrative officer, 60
Co-operation between enforced by mayor, 25
Co-ordination by—
 chief administrative officer, 60
 mayor, 25
Creation of, 9
Department heads, see **Department Heads**
Electricity, see **Department of Electricity**
Functions, continuance of, 2
Heads of, see **Department Heads**
Hearings as to affairs of, 21
Inquiry as to affairs of, power as to, 21
Interference with affairs of, prohibited, 22
Internal checks devised by controller, 64
Mayor's duties to supervise, 25
Non-interference in affairs of, 22
Number of classes of employment, determination of, 9
Petty cash funds for, 75
Positions, creating of, 143
Public health, see **Public Health Department**
Public works, see **Public Works Department**
Purchasing, see **Purchasing Department**
Real estate, see **Real Estate Department**
Revolving funds for, 75
Supervision—
 chief administrative officer, 60
 mayor, 25
Transfer of function assigned, 20
Weights and measures, see **Department of Weights and Measures**

DEPOSITS

Daily statements of, 82
Duty of making, 82
Interest on as accruing to city, 82
Pension funds and securities as deposited, 82
State law as governing, 82
Transfers of moneys for at expense of depositary, 82

DEPUTIES

Adult probation officer deputies, 58
Juvenile court probation officer, deputies of, 58
Warrant and Bond, 30

DESIGNS

Art commission approval, 46

DEVISES

See also: **Bequests; Gifts**

INDEX

DEVICES—Cont'd

- Boards and commissions powers and duties as to, 19 (d)
- Palace of legion of honor, 50
- Receiving for city, 19 (d)
- Title as vesting in city, 19 (d)

DE YOUNG MUSEUM

- See **M. H. De Young memorial museum**

DIRECTOR OF FINANCE AND RECORDS

- Appointment of, 61

DIRECTOR OF HEALTH

- Administration of department by, 61
- Advisory board consulting with, 61
- Chief administrative officer appointing, 61
- Director of public health replaced by, 61
- Health advisory board consulting with, 61
- Physician or surgeon, as, 61
- Public health department directed by, 61

DIRECTOR OF PLANNING

- Appointive officer, as, 116
- Appointment by commission, 116
- Residence requirements as to, 116
- Training and experience required for, 116
- Zoning administrator reporting on ordinances, 117.2

DIRECTOR OF PROPERTY

- Acquisitions, appraisal for, 91
- Civic auditorium in charge of, 91
- Condemnation proceedings assisted by, 91
- Departmental purchases or leases made through, 91
- Department in charge of, 91
- Eminent domain proceedings assisted by, 91
- Exchange of property by, 92
- Exposition auditorium in charge of, 91
- Idle property, recommendations as to use of, 94
- Leases of property by, 91, 93
- Maps of property as kept by, 94
- Negotiations for departmental purchases or leases made by, 91
- Purchases of real property in charge of, 91
- Records of property as shown by, 94
- Rents as collected by, 93
- Report as to estimated values, 94
- Sales of real property in charge of, 91
- Trading of property by, 92
- Unused property, recommendations as to, 94

DIRECTOR OF PUBLIC WELFARE

- Appointment of, 61.1 subd 6
- Bureaus established by, 61.1 subd 6

DIRECTOR OF PUB. WEL.—Cont'd

- Chief executive, director as, 61.1 subd 6
- Civil service, exclusion from, 61.1 subd 6
- Department as including, 61.1 subd 1
- Divisions established by, 61.1 subd 6
- Employees, hiring of, 61.1 subd 7
- Experience required for, 61.1 subd 6
- Rules and regulations enforced by, 61.1 subd 6

DIRECTOR OF PUBLIC WORKS

- Chief administrative officer appointing, 61, 106
- City engineer appointed by, 106
- Data requested by supervisors, furnishing of, 106
- Embankments on private property, correcting, 112
- Examinations, plans and estimates for supervisors, 106
- Excavations of private property, correcting, 112
- Fences on private property, correcting, 112
- Gas mains ordered by, 112
- Information requested by supervisors, furnishing of, 106
- Mains for sewers, water, gas, as ordered by, 112
- Negligence as to sidewalks and streets defects, liability for injuries caused by, 113
- Private property conditions, correcting, 112
- Public works department administered by, 61
- Safety measures as to private property ordered by, 112
- Salary of, 106
- Sewer mains ordered by, 112
- Sidewalk defect causing injuries, liability for, 113
- Special assessment project bonds recommended by, 110
- Spur tracks request referred to, 114
- Street defect causing injuries, liability for, 113
- Successor to board of public works, as, 106
- Water mains ordered by, 112

DIRECTOR OF ZOO

- Appointment and removal of, powers as to, 41
- Continuance of incumbent in position, 41

DISABILITIES

- Firemen, see **Fire Department**
- Leaves, see **Disability Leaves**
- Police, see **Police Department**

SAN FRANCISCO CHARTER

DISABILITIES—Cont'd

Retirement, see **Retirement; Firemen's Retirement; Police Retirement**

DISABILITY LEAVES

Accumulation of, 153

Authority for, 153

Fire department members entitled to, 36.1 (f)

Police department, 35.5 1/2 (f)

DISABLED PERSONS

Transfer of, see **Transfer of Disabled Persons**

DISBURSEMENT

Warrants as means for, 82

DISCHARGE

Appeal bonds, upon, 30

Bail bonds, upon, 30

DISCHARGE OF EMPLOYEES

See **Removal of Officers and Employees**

DISCIPLINE OF OFFICERS AND EMPLOYEES

Department head appointing officer for, 20

Elective officers, employees of, 34

Fire department members, 155

Interference with as prohibited, 22

Police department members, 35.3, 155

Removal, see **Removal of Officers and Employees**

Suspension, see **Suspension of Officers and Employees**

DISCOVERY AND INSPECTION

Investigation of department, power in, 21

DISMISSAL OF EMPLOYEES

See **Removal of Officers and Employees**

DISORDERLY BUSINESSES

Revocation of permits for, 35.6

DISTRICT ATTORNEY

Appointments in office of, 29, 30

Assistant, 29, 34, 34.1

Civil service applicable to employees of, 34.1

Complaints, drawing of, 29

Criminal cases, prosecution of, 29

Duties of, generally, 29

Elective officer, as, 5, 29

Expenses paid from special fund, 29

Investigators as subject to civil service, 34.1

Law practice as qualification, 29

DISTRICT ATTORNEY—Cont'd

Municipal courts reports filed with, 54

Municipal election for, 5

Official bond of, 29

Qualifications of, generally, 29

Removal from office of, 29

Requisitions upon, special fund, 29

Salary of, 29, 151.1

Special fund of, 29

Term of, 5

Warrant and bond office, see **Warrant and Bond Office**

Warrants for arrest, duty to issue, 29

DISTURBANCE OF PEACE

Chief of police having sheriff powers during, 35.7

DOCKING OF VESSELS

Harbor commission controlling, 48

DOCKS

Assigning use of, 48

Leases of, 48

DONATIONS

Investment of, 82

Power of city to receive, 2

DREDGING

Harbor commission as regulating, 48

DUTIES

Administrative code specifying, 23

Board of education, generally, 49

Boards, generally, 19

City attorney, 26

City planning commission, generally, 49

Civil service commission, generally, 49

Commissions, generally, 19

Continuation on in department, 23

County officers, generally, 18

Department heads, generally, 20

District attorney, generally, 29

Fire commission, generally, 36

Harbor commission, generally, 48

Harbor master's, generally, 48

Public utilities commission, 49, 120

Public utilities commission members, 120

Retirement board, generally, 159

E

EARTHQUAKES

Salary deductions during emergencies, 70.1

ECONOMIC CONDITIONS

Salary deduction during emergencies in, 70.1

INDEX

ELECTIONS

Alphabetical arrangement on ballots, 175
Assembly district arrangement of names, 175

Ballots—

alphabetical arrangement of names, 175
assembly district arrangement on, 175
identical ballots printed, 176
incumbency of candidates indicated on, 175

name printed after nomination, 175
office of candidates indicated on, 175
order of names on, 175
profession of candidates indicated on, 175

rotation of candidates names on, 176
sample ballots to voters, 176
type size and face used, 175
vocation of candidates indicated on, 175

Bond elections for public utilities on petition of electors, 105

Bond issues for, 174

Borough, see **Boroughs**

Candidates—

alphabetical arrangement of names on ballots, 175
assembly district arrangement of names, 175
incumbency indicated on ballots, 175

name placed on ballot, 175
occupation indicated on ballots, 175
office held as indicated on ballots, 175
order of names on ballots, 175
profession indicated on ballots, 175
rotation of names on ballots, 176
vocation indicated on ballots, 175
withdrawal of, 175

Canvasses—

generally, 9
state law as governing, 174, 178

Certificate of election as subject to state law, 178

Certificate of sponsors—

defect, effect of, 175
preservation for 4 years, 175
registrar's refusal to file, 175

Conduct vested in registrar, 173

Declaration of candidacy—

defect in, effect of, 175
filed with registrar, 175
mailing to voters, 176
preservation for four years, 175
refusal of registrar to file, 175

Declaration of election as subject to state law, 178

Defects not invalidating, 186

Election officers—

clerks, 177
inspector, 177

ELECTIONS—Cont'd

Election officers—Cont'd

judge, 177
pay withheld for violations, 177
voting machine, officers when used, 177
Fee of candidates paid to registrar, 175

General elections—

officers chosen at, 5, 174
time for, 174

Identical ballots printed, 176

Incumbents names on ballots, 175

Informalities not invalidating, 186

Initiative, see **Initiative, Referendum and Recall**

Management vested in registrar, 173

Municipal—

general, see *supra*, General Elections
special, see *infra*, Special Election

Names of candidates on ballots, 175

Nomination of candidates—

certification of declarations, 175
declaration of candidacy filed with registrar, 175
fee paid to registrar, 175
refusal of registrar to act, reason for, 175
sponsors certificates, 175
statement of qualifications, 175

Officers chosen by, 174

Officers for,—

generally, 177
retired person permitted to serve as, 163 (a), 165.2 (g), 165.2 (J), 168.1.12, 171.1.12

Official count of votes certified, 9

Order of names on ballots, 175

Petitions for special elections, 174

Policy declarations, for, 174

Polling places, publication by posting only, 174

Precinct board of election officers for, 177

Precincts—

board of election officers for, 177
publication by posting only, 174
registrar establishing, 173

Prohibited practices as to, 222

Publication of precinct and polling places by posting only, 174

Recall, see **Initiative, Referendum and Recall**

Referendum, see **Initiative, Referendum and Recall**

Refusal of registrar in nomination proceedings, reasons for, 175

Registrar of voters, see **Registrar of Voters**

Registration of voters—

registrar controlling, 173
state laws applicable, 174

ELECTIONS—Cont'd

- Rotation of candidates names on ballots, 176
- Sample ballots mailed to voters, 176
- Special elections—
 - board of supervisors calling, 174
 - bonds issue, for, 174
 - fund for initiative and recall elections, 181
 - initiative, referendum, recall petitions filed for, 174
 - initiative, time for, 182
 - officers chosen at, 174
 - petitions for, 174
 - policy declaration, for, 174
 - recall, time for, 182
 - registrar as calling, 174
 - supervisors calling, 174
- Sponsors of candidates—
 - certificate of, 175
 - names mailed to voters, 176
- State law as applicable to, 174
- Statement of candidates qualifications, 175
- Substantial compliance with charter required, 186
- Tax levy maximum as excluding cost of, 78
- Time, general elections, 174
- Type size and face on ballots, 175
- Withdrawal of candidate, 175

ELECTIVE OFFICERS

- Age of retirement, 158.2
- Assessor, as, 5, 28
- Assistants of, generally, 34
- Borough, see **Boroughs**
- Candidacy as forfeiture of appointive office, 5
- City attorney as, 5, 26
- Crimes, removal upon conviction of, 11
- Dealing solely through, 22
- District attorney as, 5, 29
- Election of, see **Elections**
- Employees of, generally, 34
- Judges of municipal court as, 5
- Mayor as, 5, 25
- Miscellaneous employees retirement, inclusion under, 158.2
- Municipal court judges as, 5
- Nomination of, see **Elections**
- Public defender as, 5, 33
- Recall, procedure for, 179
- Removal of, 11
- Residence during term, 7
- Retired persons excluded as, 163 (a), 165.2 (G), 165.2 (J), 168.1.12, 171.1.12

ELECTIVE OFFICERS—Cont'd

- Retirement system membership, 158, 158.1, 158.2, 165.2
- Salary standardization, subject to, 151
- Sheriff as, 32
- Supervisors as, 5
- Sheriff as, 5
- Suspension of, 11
- Treasurer as, 5, 31

ELECTIVE OFFICES MADE APPOINTIVE

- Civil service as applying to, 62
- Incumbent as subject to civil service, 62

ELECTORS

- Appointments restricted to, 7
- Board of education confirmed or rejected by, 134
- Board of permit appeals members as being, 39
- Candidacy restricted to, 7

ELECTRICITY

- Department, see **Department of Electricity**

ELIGIBLES LIST

- Alteration upon re-examination of papers, 147.1
- Appointment from, see **Civil Service Appointment**
- Arrangement in order of excellence, 147.1
- Automatic expiration of, 145
- Cancellation of veterans preference credits on, 145
- Certification from, 148
- Changes upon re-examination of papers, 147.1
- Concealment causing removal from, 147
- Correction on re-examination of papers, 147
- Determination by commission, 145
- Disabled veterans preferred on, 145
- Emergency appointments in event of no list, 149
- Emergency examinations for permanent appointment list, 149
- Examination papers inspected prior to approval of, 147.1
- Final approval of, time for, 147.1
- Fraudulent standing, removal for, 147
- Highest names certified, 148
- Immediate examination for permanent appointments list, 149
- Inspection of examination papers prior to approval, 147.1
- Military leaves examinees included upon, 146.1

INDEX

ELIGIBLES LIST—Cont'd

- Military services—
 - affecting standing on, 153
 - reaching of names during, 153
- Preference for appointments after military service, 153
- Removal of names, 145
- Return to after termination during probationary period, 148
- Rules violations causing removal, 147
- Substitute promotional examinees included in, 146.1
- Supplemental appropriations for during war time, 145.1
- Temporary appointments from, 149
- Veterans preference on, 145, 153
- Violations of rules causing removal, 147
- War time maintenance of, 145.1

EMERGENCIES

- Actual existence required for legislation, 16
- Alleviation by salaries deductions, 70.1 subd 2
- Allotments to departments for, 72
- Anticipation of, studies and surveys in, 25
- Appointments, see **Non-Civil Service Appointments**
- Budget estimates deductions for, 70.1 subd 3
- Board of supervisors, declaration by, 70.1
- Civil service examination exemption during unemployment emergencies, 149
- Continuance time anticipated, 70.1 subd 1
- Deductions in salary during, see **Salary Deductions During Emergencies**
- Definition of, 16
- Depression of 1930's, 70.1 sub 6
- Funds for, 79
- Leaves of absence for national defense, 153
- Maximum salary reductions during time of, 70.1 subd 2
- Mayor—
 - declaration by, 70.1
 - power in case of, 25
- Measures, see **Emergency Ordinances**
- National—
 - leaves of absence for, 153
 - limited tenure appointments during, 145.1
 - retirement credits affected by government service during, 110
 - sea duty as licensed officers, for, 153
- Nineteen thirty-three, and years following, as, 70.1 subd 6
- Ordinances and resolutions, see **Emergency measures**

EMERGENCIES—Cont'd

- Public works in expeditious manner during, 95
- Purchases on informal bids, 88
- Reallocation of moneys to meet, 70.1 subd 6
- Salary deduction during time of, 70.1
- Specific statement required for legislation, 16
- Street construction emergency work, 95
- Unemployment, civil service examination exemption during, 149
- United States, leaves of absence for service in, 153

EMERGENCY ORDINANCES

- Actual emergency required for, 16
- Declaration of emergency in specific section of, 13
- Definition of emergency required for, 16
- Effective date of, 16
- Initiative ordinance, restriction by, 16
- Passage of, generally, 13
- Publication of, 13, 15
- Readings, waiver of, 13
- Reference to committee, waiver of, 13
- Referendum ordinance, restriction by, 16
- Restrictions on, 16
- Specific voting on, requirement of, 16
- Time for action by mayor on, 14

EMERGENCY RESERVE FUND

- Appropriations for, 79
- Balance carried forward, 79
- Chief administrative officer approving appropriations from, 79
- Creation of, 79
- Maximum appropriation for, 79
- Tax levies for, 79

EMINENT DOMAIN

- Appraisals for acquisition of property by, 91
- Departmental acquisition of property by, 91
- Director of property assisting in proceedings, 91
- Street railway acquisition, compensation for, 131

EMPLOYEES

- Bonds of, generally, 8
- Candidacy for election as forfeiture of position, 5
- Compensations, continuance of, 2
- Continuance of rights and liabilities of, 2
- Continuance in positions, 2
- Discipline of, see **Discipline of Officers and Employees**
- Elective officers, of, 34

EMPLOYEES—Cont'd

Forfeiture of position upon candidacy, 5
Group bonding of, 8
Ill health excusing residence, 7
Positions continued, 2
Removal of, see **Removal of Officers and Employees**
Residence during employment, 7
Rules and regulations for, 19 (a)
Suspension, see **Suspension of Officers and Employees**

ENCUMBRANCES

Allotments to departments as affecting controller's certification of, 72

ENGINEERS

City planning commission contracting with, 116
Marine engineers, reassignment of, 38.3
Traffic bureau, engineer as assistant, 35.4

ESTIMATES

Budget, see **Budget Estimates**
Department heads' duty to make, 20
Mayor's financial estimates to supervisors, 72
Revenue estimates by mayor to supervisors, 72

EVENING SCHOOLS

Retirement service credits allowed for, 165.2 (B), 165.2 (C)

EVIDENCE

Additional evidence in removal proceedings appeal, 154
Investigation compelling production of, 21

EXAMINATIONS

Civil service, see **Civil Service Examinations**
Medical, see **Medical Examinations**

EXCAVATIONS

Harbor commission as regulating, 48

EXCHANGES

Real property exchange, 92
Used materials exchanged, 88

EXEMPTIONS

Harbor expenditures indebtedness as exempt from bonded debt limit provisions, 47

EXHIBITIONS

Admission fees, permission to charge, 42
Lease of stadiums and recreation fields for, 42

EXPENDITURES

Accounts and accounting procedure for, 64, 72
Annual report to mayor, 19 (e)
Appropriation and balance as prerequisite to obligations for, 86
Appropriations for transfers as pursued in obligation for, 85
Art and music advancement expenditures, control of, 46
Balances and anticipated income governing, 86
Budget estimates information furnished as to, 70
Cash reserve fund for expenditures in anticipation of tax collections, 81
Controller's quarterly report as to, 65
District attorney's special fund, expenditures from, 29
Examination as to department expenditures, 21
Quarterly report of controller as to, 65
Report by department to mayor, 19 (e)

EXPENSES

Cash reserve fund for expenses prior to tax collections, 81

EXPLOSIVES

Fire marshal enforcing laws as to, 37

EXPOSITION AUDITORIUM

Real estate department as managing, 61

EXTENSION FUND

Balance as payable to market street railway company, 119.1 par 3 (d)
Payments limited to moneys in, 119.1 par 6

F

FEES

City services, for, 20
Civil service examinations papers, fee for inspection, 147.1
Harbor commission as regulating and collecting, 48
Harbor operation expenses, fees to pay, 48
Law library fees, collection of, 57
Licenses, fees for, 24
Municipal court fees paid into treasury, 53
Payment into treasury, duty of, 150
Public utilities commission obligated to pay, 121

FEMALES

Women, see **Women**

INDEX

FILING

- Budget estimates filed with controller, 69
- Capital improvement projects schedules, 69.1
- City attorney's papers, filing of, 26
- Controller's reports, 65
- Street railway declaration of surrender of franchises, 131
- Vouchers accounting for expenditures from district attorney's special fund, 29

FINANCE AND RECORD DEPARTMENT

- Administrator for, 61
- County clerk included in, 61
- Director, 61
- Public administrator included in, 61
- Registrar of voters included in, 61
- Tax collector functions and personnel included in, 61

FINANCIAL REPORTS

- Controller prescribing methods for, 64
- Controller's annual report, 65
- Quarterly report of controller, 65

FIRE AND POLICE DISCIPLINARY PROCEDURE

- Generally, 155
- Inspectors as subject to, 35.3

FIRE BOATS

- Assignment to after reassignment to fire department, 38.3
- Conversion, reassignment of personnel due to, 38.3
- Curtailment, reassignment of personnel due to, 38.3
- Death on duty, see **Death from Injury on Police or Fire Duty**
- Engineers—
 - reassignment, 38.3
 - retirement members, as, 171.1.1
- Firemen—
 - reassignment of, 38.3
 - retirement members, as, 171.1.1
 - salaries of, 36
- Hours of work, limitation on, 36
- Lay-offs of pilots and engineers upon curtailment or conversions, 38.3
- Marine engineers, salaries of, 36
- Outside of city, sending of, 36
- Pilots—
 - reassignment of, 38.3
 - retirement members, as, 171.1.1
 - salaries of, 36
- Reappointments to, 38.3
- Retirement benefits for personnel of, 168.3

FIRE BOATS—Cont'd

- Salaries of personnel, 36
- Similar positions, assignment to after reassignment, 38.3

FIRE CHIEF

- Fire marshal, appointment of, 37
- Salary of, 36
- Secretary to, appointment of, 36.1 ½

FIRE COMMISSION

- Chief of department, see **Fire Chief**
- Commissioners as successors in office, 36
- Compensation of, 36
- Discipline hearings by, 155
- Management of fire department by, 36
- Mayor as appointing, 36
- "Members of fire department" for purpose of salary adjustment as excluding, 36.2
- Members, number of, 36
- Permits, prescribing duties as to, 38
- Powers and duties, generally, 36
- Salaries of, 36
- Salvage corps under jurisdiction of, 38.1
- Secretary of department, appointment of, 36
- Term of office of, 36

FIRE DEPARTMENT

- Adjustment in salaries and wages, 36.2
- Applicants, qualifications of, 145
- Assistant chiefs, salaries of, 36
- Battalion chiefs, salary of, 36
- Captain, bureau of fire prevention and public safety as rank in, 38.01
- Captain of fire prevention bureau established in, 38.01
- Captains eligible for battalion chief examination, 38.01
- Captains, salaries of, 36
- Chief engineer, salvage subject to orders of, 38.1
- Chief of, see **Fire Chief**
- Chief operator—
 - investigator or inspector position open to, 38.01
 - salaries of, 36
- Citizenship of members, 7
- Clean record, credit for in examinations, 146
- Commission, see **Fire Commission**
- Compensations, generally, 36, 36.1, 36.2
- Competitive examinations for fire prevention and fire investigation bureaus, 38.01
- Continuance of positions in, 36
- Death on duty, see **Death From Injury on Police or Fire Duty**
- Days off, 36, 36.1 (b)

FIRE DEPARTMENT—Cont'd

Deputy chief—
 appointment of, 36.1 ½
 salary of, 36
 Disabilities in line of duty—
 city's payment for benefits, 172
 leaves for, 36.1 (f)
 medical treatment for, 172
 reduction of benefits by amount of
 other benefits, 172
 retirement board administering provi-
 sions as to, 172
 workmen's compensation benefits, 172
 Disciplinary procedure, 155
 Drivers, salaries of, 36
 Engineers, salaries of, 36
 Fire boats, see **Fire Boats**
 Fire commission, see **Fire Commission**
 Fire Fighting, see **Fire Fighting**
 Firemen—
 generally, see **Firemen**
 definition for salary adjustment, 36.2
 Heroic conduct, reward for, 36
 Holidays for members of, 36
 Hosemen—
 eligibility for inspector and investigator
 positions, 38.01
 salaries of, 36
 Hours of work, limitation on, 36
 Hydrant-gatemens as retirement members,
 171.1.1
 Injury on duty, see **Death from Injury on
 Police or Fire Duty**
 Inspector of fire prevention bureau in,
 38.01
 Investigator of bureau of fire investiga-
 tion in, 38.01
 Lieutenant—
 eligibility for captain examination,
 38.01
 salaries of, 36
 Lieutenant of fire investigation estab-
 lished in, 38.01
 Lieutenant of fire prevention bureau es-
 tablished in, 38.01
 Marshal, see **Fire Marshal**
 Medical treatment for disability, 172
 Member of, for retirement purposes,
 171.1.1
 Meritorious conduct, reward for, 36
 Military service of eligibles affecting ap-
 pointments in, 153
 Other cities, salaries fixed by survey of,
 36.2
 Outside of city, death or disability in
 service, retirement system covering,
 162, 171.1.1

FIRE DEPARTMENT—Cont'd

Overtime in—
 generally, 36, 36.1 (c)
 salary warrants for, 36.1 (e)
 Physical qualifications of applicants, 145
 Physician for, 36
 Platoons—
 continuance of, 36.1 (a)
 division into, 36
 Positions as continuing, 36
 Promotional examinations, fire boats per-
 sonnel excluded from, 38.3
 Promotions—
 clean record considered, 146
 examinations for, 146
 meritorious service considered, 146
 ranks from which made, 146
 seniority of service considered, 146
 Reappointments to fire boats, 38.3
 Reassignment of fire boat personnel to,
 38.3
 Residence of members required, 7
 Retirement, see **Firemen's Retirement**
 Salaries and wages—
 generally, 36, 36.1, 36.2
 adjustment in accordance with surveys,
 36.2
 fire boat personnel reassigned, 38.3
 ordinance fixing in accordance with
 surveys, 36.2
 retirement contributions deducted from,
 172
 standardization, exception from, 151.1
 workmen's compensation in lieu of, 172
 Salvage corps, see **Salvage Corps**
 Secretaries—
 appointment of, 36, 36.1 ½
 salary of, 36
 Seniority of service—
 allowance in promotional exams, 146
 fire boat personnel reassigned, 38.3
 Service years, computation of, 36
 Sick leaves for members, 36.1 (f)
 Stokers, salaries of, 36
 Surveys of other cities, salaries fixed in
 accordance with, 36.2
 Tillermen, salaries of, 36
 Tours of duty—
 generally, 36
 continuance of, 36.1 (a)
 exchange permitted, 36
 hours of work in fire department, limi-
 tation on, 36
 salvage corps members, 38.1
 Transfers—
 disability, 156
 salvage corps, to, 38.1

INDEX

FIRE DEPARTMENT—Cont'd

- Truckmen—
 - eligibility for inspector and investigator positions, 38.01
 - salaries of, 36
- Vacancies, fire boat personnel reassigned to, 38.3
- Vacations—
 - entitlement to, 36.1 (d)
 - working on, 36.1 (d)
- Volunteer department between 1850 and 1866, relief of members of, 170
- Watches, see *supra* Tours of duty
- Workmen's compensation, entitlement to, 172

FIRE FIGHTING

- Building removals for purpose, 36
- Licenses and permits for businesses affecting, 24
- Outside of city, men and material for, 36

FIRE INVESTIGATION

- Bureau, see **Bureau of Fire Investigation**

FIRE MARSHAL

- Appointment of, 37
- Inflammable goods laws enforced by, 37
- Salvaged property, sale of, 37

FIREMEN

- Definition for salary adjustment, 36.2
- Marine firemen, reassignment of, 38.3

FIREMEN'S RETIREMENT

- Actuarial equivalent retirement upon, 171.1.2
- Adjustment of wages affecting, 36.2
- Age and service for—
 - generally, 171, 171.1.2
 - entrance into department, determination of age, 171.1.10 (1)
 - contributions as based on, 171.1.10 (1)
- 55 years age—
 - death allowance upon, 171.1.5
 - less than, retirement upon, 171
 - optional retirement upon, 169 (a)
- 20 years service—
 - family benefits on death before retirement, 169 (b)
 - retirement upon, 171
- 25 years service—
 - natural death upon, 171.1.5
 - retirement upon, 171.1.2
- 60 years age—
 - amount of allowance for service prior to, 171.1.2
 - disability retirement upon, 169 (a)
 - retirement upon, 171.1.2

FIREMEN'S RETIREMENT—Cont'd

- Age and Service for—Cont'd
 - 65 years age—
 - allowance for service under 25 years, 171.1.2
 - allowance upon, 171.1.2
 - 67 years age—
 - retirement upon, 171.1.2
 - 70 years age—
 - compulsory retirement upon, 171
 - 10 years service—
 - incapacity retirement upon, 171.1.3
 - 20 years service—
 - 55 years age, family benefits on death before retirement, 169 (b)
 - 60 years age, retirement upon, 169 (a)
 - 25 years service—
 - actuarial value, allowance computed on, 171.1.2
 - allowance when retired regardless of age, 171.1.2
 - death allowance upon, 171.1.5
 - optional retirement upon, 169 (a), 171.1.2
 - 55 years age—
 - natural death upon, 171.1.5
 - retirement upon, 171.1.2
 - 30 years service—
 - death allowance for, 171.1.5
 - natural death, allowance upon, 171.1.5
 - optional retirement, 171.1.2
 - retirement upon, 171, 171.1.2
 - Allowances and benefits—
 - amount of, 169 (a), 171.1.2
 - beneficiaries designated, allowance to, 171.1.7
 - beneficiary receiving contributions, 171.1.10 (3)
 - benefits including, 171.1.1
 - children's, see *infra*, Children's benefits
 - continuance—
 - after January 8, 1932, 170
 - after natural death, 171.1.5
 - death benefits included in, 171.1.1
 - definition of, 171.1.1
 - disabilities affecting, 171.1.3
 - election as to membership, after, 169 (f)
 - estate receiving, 171.1.7
 - gainful employment, reduction because of, 171.1.12
 - illness from duty, effect of, 171.1.3
 - limitation to charter provisions for, 169 (e)
 - monthly payments, as, 171.1.1
 - natural death, allowance on, 171.1.5
 - parents, see *infra*, Parents' allowances
 - percentage allowed for prior service, 169 (f)

SAN FRANCISCO CHARTER

FIREMEN'S RETIREMENT—Cont'd

Allowances and benefits—Cont'd

prior service, for, 169 (f)
reduction because of gainful employment, 171.1.12

workmen's compensation, 169 (e)

retirement allowance included in,

171.1.1

termination of employment, refund upon, 171.1.8

widows, see *infra*, Widows' allowances

workmen's compensation benefits reducing, 169 (e), 171.1.6

Amendment of sections, effective date of, 171.1.14

Bodily injury, retirement for, 171.1.3

Charter—

generally, see *Charter*

definition of, 171.1.1

Children's benefits—

continuance after January 8, 1932, 170

death allowance, 168.3, 169 (b), 171.1.4

election as to, 171.1.5

natural death of member, 171.1.5

no widow, pension in case of, 169 (b)

option as to, 171.1.5

retired member's death, upon, 169 (a)

widows' death, upon, 169 (b)

City's contributions for, 171.1.10 (5), 171.1.10 (6)

Compensation—

city contributions based on, 171.1.10 (6)

definition of, 171.1.1

overtime excluded from, 171.1.1

workmen's compensation distinguished from, 171.1.1

Compensation earnable, definition of, 171.1.1

Compulsory retirement at seventy, 171

Conflicting provisions superseded, 171.1.13

Continuance of benefits—

after January 8, 1932, 170

after natural death, 171.1.5

Continuous service required for, 169 (a), 171

Contributions—

accounts credited with, 171.1.10 (3)

additional by city, 169 (d)

adjustment personnel on transfers, 171.1.8

age as basis of, 171.1.10 (1)

beneficiary, payment to, 171.1.10 (3)

city's—

generally, 171.1.10 (6)

application of, 171.1.10 (5)

disabled member, 172

installment payment of, 171.1.10 (6)

members on January 8, 1932, 169 (d)

FIREMEN'S RETIREMENT—Cont'd

Contributions—Cont'd

continuing credit of contributions prior to July 1, 1945, 171.1.10 (4)

deductions for, 171.1.10 (3)

deficit, city's additional contributions for, 169 (d)

dependent contributions, amount of, 171.1.10 (2)

disability benefits deducted for, 172

election as to membership, after, 169 (f)

end of employment, refund upon, 171.1.8

estate payment to, 171.1.10 (3)

interest considered in computing, 171.1.1 (3), (6)

July 1, 1945, continuing credit of, 171.1.10 (4)

limitation upon, 169 (e), 171.1.10 (2), 171.1.10 (2)

normal rate as one third of allowance, 171.1.10 (1)

other assets, in fund with for joint participation, 171.1.10 (7)

prior contributions, pension from, 169 (f)

rate, determination of, 171.1.10 (1)

redeposit—

of refund, 171.1.8

to obtain credits, 171.1.9 (2)

refund—

dependent contributions, 171.1.10 (2)

end of employment or transfer,

salary deduction for, 171.1.10 (3) 171.1.8

total, with interest applied to allowances, 171.1.10 (3)

transfers, adjustment of accounts upon, 171.1.8

Death allowance and benefits—

definition of, 171.1.1

election as to, 171.1.2

estate or beneficiaries receiving, 171.1.7

family benefits, death before retirement, 169 (b)

monthly payments, as, 171.1.1

natural death, 169 (c), 171.1.5

retirement with, 171.1.2

Death on duty, see *Death From Injury on Police or Fire Duty*

Deductions from salary for, 171.1.10 (3)

Dependent contributions for, 171.1.10 (2)

Disability—

actuarial equivalent, with death benefits, 171.1.2

allowance on retirement for, 171.1.3

board considering retirement for, 171.1.3

INDEX

FIREMEN'S RETIREMENT—Cont'd

Disability—Cont'd

- credits for other service, 171.1.9 (2)
- end of, allowance ceasing, 171.1.3
- natural death after retirement for, 171.1.5
- recommendations as to retirement upon, 171.1.3
- recovery, end of pension upon, 169 (a)
- restoration to service after, 169 (a)
- retirement for, 169 (a), 171.1.3
- return to service after, 171.1.3
- sixty years age and twenty years service, 169 (a)

Effective date of amendments, 171.1.14

Election as to children, parents, widows allowances, 171.1.5

Employment after, effect of, 171.1.12

Estate—

- allowable payable to, 171.1.7
- total contributions paid to, 171.1.10 (3)

Family benefits, death before retirement, 169 (b)

Final compensation, definition of, 171.1.1

Fire boat personnel entitled to, 168.3, 171.1.1

Future members, retirement of, 171

Gainful employment after, effect of, 171.1.12

Hydrant-gateman as member for, 171.1.1

Illness on duty, retirement for, 171.1.3

Incapacitation, requirement for, 171.1.3

Injuries, retirement for, 171.1.3

Installment payment of city's contributions, 171.1.10 (6)

Interest, definition of, 171.1.1

Joint participation, contributions held with other assets for, 171.1.10 (7)

July 1, 1949, membership on or after, 171.1

July 1, 1950, option as to membership after, 171.1

Marine engineers as members for, 171.1.1

Marriage necessary for widows allowance, 171.1.5

Member of fire department, definition of, 162, 171.1.1

Membership—

- after January 8, 1932, 171
- definition of, 162, 171.1.1
- July 1, 1949 and after, 171.1
- July 1, 1950, options, 171.1

Military service, credit for, 171.1

Options—

- children, widows, parents allowances, 171.1.5

July 1, 1950, membership after, 171.1

FIREMEN'S RETIREMENT—Cont'd

Options as to membership—

- choice for member on January 8, 1932, 169 (f)
- section 169, or Section 171, 169 (f)

Option as to retirement—

- service retirement, 169 (a)
- 55 years of age, 171.1.2
- 25 years service, 171.1.2
- 30 years service, 171.1.2

Other departments, credits for service in, 171.1.9 (2)

Outside of city, service, 162

Overtime pay affecting, 36

Parents allowance—

- continuance after January 8, 1932, 170
- death allowance, 168.3, 169 (b), 171.1.4
- election as to, 171.1.5
- natural death of member, 171.1.5
- option as to, 171.1.5

Pension, see supra, Allowances and benefits

"Rates of compensation" for purposes of, 36.2

Ratios as to allowance, 171.1.2

Reductions on account of workmen's compensation, 169 (e)

Refund—

- dependent contributions, 171.1.10 (2)
- end of employment or transfer, 171.1.8

Retirement allowance, see supra Allowances and benefits

Retired person, see Retired Persons

Retirement board—

- generally, see Retirement Board
- definition of, 171.1.1

Retirement system, definition of, 171.1.1

Right of retirement, 171.1.11

Salary deduction for, 171.1.10 (3)

Salvage corps members entitled to, 168.3, 171.1.1

Saving clause for provisions, 171.1.15

Service credits—

- disability in line of duty, time credited, 172
- military service, for, 171.1.9 (3)
- other departments, service in, 171.1.9 (2)
- police and fire service, 171.1.9 (1)
- re-deposit of contributions to obtain, 171.1.9 (2)

Service required for—

- generally, 171
- aggregate total service, 171.1.2
- continuous service necessary, 171
- years, see supra, Age and service for

Sickness on duty, death from, 169 (b)

FIREMEN'S RETIREMENT—Cont'd

System, definition of, 171.1.1

Unconstitutionality, saving clause for,
171.1.15

Widow allowances—

child taking on widow's death, 169 (b)

continuance after January 8, 1932, 170

contributions for, 171.1.10 (2)

death before retirement, 169 (b)

death for injury on duty, 169 (b)

election as to, 171.1.5

marriage at time of injury or illness,

168.3, 171.1.4, 171.1.5

natural death of member, 171.1.5

option as to, 171.1.5

re-marriage, payment until, 168.3,

171.1.4, 171.1.5

retired member, death of, 169 (a)

time of marriage required for, 171.1.5

Workmen's compensation payment affect-
ing, 169 (e), 171.1.6

FIRE PATROL OF SAN FRANCISCO

Membership in, 38.1

FIRE PREVENTION

Bureau, see **Bureau of Fire Prevention
and Public Safety**

Licenses and permits for business affect-
ing, 24

FIRE PROTECTION

Telephone system service for, 61

FIRES

Conflagrations, see **Conflagrations**

Salary deduction during emergencies due
to, 70.1

FISCAL YEAR

Beginning and ending date, 69

Emergencies not to be anticipated beyond,
70.1 subd 1

FISHING

Harbor commission regulating facilities
used in, 48

FIXED CHARGES

Appropriations for as subject to adminis-
tration by chief administrative offi-
cer, 72

FLOODS

Salary deductions during emergencies due
to, 70.1

FOOD INSPECTIONS

Fees for licenses as covering cost of, 24

Ordinance providing for, 24

FOREIGN TRADE ZONE

Bonded indebtedness authorized for 121

Public utilities, as, 121

FORFEITURES

Avoidance of upon abandonment of park
and recreation lands, 41.1

FRANCHISES

Action postponed by mayor, 25

California street railroad company fran-
chises transferred to city, 119.4 (c)

Charter provisions not applicable to stree
railway operation under permits, 131

Effective date of ordinances granting pub-
lic utility franchises, 16

Emergency legislation prohibited, 16

Interest by officers and employees pro-
hibited, 222

Market street railway franchise trans-
ferred with title, 119.1 par 5 (c)

Ordinances, effective date of, 179

passage generally, 13

Postponement of action by mayor, 25

Referendum as to granting of, 123

Street railway franchises surrendered for
operating permit, 131

Termination of market street railway
franchises, 119.1 par 5 (c)

FUNCTION

Transference of person with, 2

FUNDS

Cash position as shown by controller's
summaries, 65

Chief of police, contingent fund for, 35.8

District attorney's, 29

Emergency—

reallocation of funds to meet, 70.1
subd 6

reserve fund, 79

Fire Department salary revisions, funds
for, 36.2

General, see **General Fund**

Harbor revenue, see **Harbor Revenue
Funds**

Health, see **Health Service**

Interest funds, see **Interest Funds**

Interest on deposits as accruing to, 82

Law library, 57

Police department salary adjustment, pay-
ment of, 35.5.1

Quarterly summaries for, 65

Reallocation of to meet emergency, 70.1
subd 6

Retirement funds, see **Retirement Funds**

Salary survey funds, 151

Sinking, see **Sinking Fund**

INDEX

FUNDS—Cont'd
Special elections, for initiative referendum and recall, 181
Temporary transfers or loans as made from, 81
Unencumbered balances, transfers of, 77
Utilities reconstruction and replacement funds, 128.1

G

GAMES
Admission fees, permission to charge, 42
Lease of stadiums and recreation fields for, 42

GARAGES

Transfer to central garage, 88

GAS

Mains as ordered by director of public works, 112

GENERAL FUND

Balancing during emergencies by salary deductions, 70.1 subd 2
California street railroad company payment from, 119.4
Market street railway payments from as prohibited, 119.1 par 6
Retirement system contributions charged to, 160
Utility surpluses transferred to, 129

GENERAL LAWS

Generally, see State Law

GIFTS

See also: **Bequests; Devises**
Boards and commissions powers as to, 19 (d)
California palace of legion of honor, generally, 50
Investment of, 82
M. H. de Young museum, 51
Palace of legion of honor, 50
Power of city to receive, 2
Prohibited practises as to, 222
Receiving for city, 19 (d)
Title vesting in city, 19 (d)
Works of art, approval of, 46

GRANTS

Emergency measures prohibited, 16

GROUND

Art commission advise as to, 46
Buildings on—
power to erect, 42
use restricted to recreation, 42

GROUNDS

Control management and direction by commission, 42
Leases of land, 42
War memorial, trustees in charge of, 44

H

HARBOR

Acceptance of properties by city, 47
Agreements relating to transfers to city, 48.1
Betterments paid for by revenue, 48.1
Bonded debt—
limit not applying to expenditures for, 47
payment from revenues, 48.1
state's assumption of by city, 47
Bond issues for acquisition of property, authority for, 47
Commission, see **Harbor Commission**
Depreciation costs paid by revenue fund, 48.1
Exemption debt limit provisions, 47
Extension and betterment paid for by revenue, 48.1
Leases of land, buildings, docks, and piers in, 48
Maintenance expenses paid from revenue fund, 48.1
Management by harbor master, 48
Operating expenses paid from revenue fund, 48.1
Property—
acceptance of, 47
possession and management, 48
Reconstruction costs paid by revenues, 48.1
Repairs and maintenance paid from revenue fund, 48.1
Replacement costs paid by revenues, 48.1
Revenue for operation of, charges producing, 48
Services, fees and schedule of fees for, 48
State harbor commissioners, see **Board of State Harbor Commissioners**
State indebtedness as to, assumption by city, 47
Transfer by state to city, 47, 48.1

HARBOR COMMISSION

Anchoring, regulation of, 48
Attorneys for legal work of, 48
Bay, controlled and managed by, 48
Boat operation, powers as to, 48
Budgetary procedures as applied to, 48.1
Bureaus for affairs established by harbor master, 48

HARBOR COMMISSION—Cont'd

Chief executive of, harbor master as, 48
 City attorney as legal advisor of, 48
 Civil service provisions applying to employees of, 48.1
 Cold storage plants regulated by, 48
 Commerce facilities regulated by, 48
 Compensation of members, 47
 Departments established by harbor master, 48
 Docking, regulation of, 48
 Duties vested in, 47, 48
 Employees continued in positions, 48.1
 Equipment controlled and managed by, 48
 Fiscal procedures applied to, 48.1
 Fishing facilities regulated by, 48
 Leases of facilities, power as to, 48
 Master, see **Harbor Master**
 Mayor appointing, 47
 Membership of, 47
 Mooring, regulation of, 48
 Navigation facilities regulated by, 48
 Number of members in, 47
 Official bonds of members, 47
 Powers of—
 generally, 48
 control of harbor, 47
 Properties and equipment possessed and controlled by, 47, 48
 Railroad regulated by, 48
 Refrigeration plants regulated by, 48
 Retirement benefits applicable to employees of, 48.1
 Salaries of members, 47
 Seniority of employees, reckoning of, 48.1
 Special council for, 48
 Terms of office in, 47
 Towing, regulation of, 48
 Utilities of harbor as vested in, 47
 Vacancies filled by mayor, 47
 Warehouses regulated by, 48
 Wharfs regulated by, 48

HARBOR MASTER

Agreement for properties acquisitions by, 48
 Appointment of, 48
 Bureau heads appointed and removed by, 48
 Bureaus established by, 48
 Department heads appointed and removed by, 48
 Departments established by, 48
 Duties of, generally, 48
 Entire time devoted to duties, 48
 Legal proceedings, powers as to, 48
 Management of commission affairs by, 48

HARBOR MASTER—Cont'd

Powers of, generally, 48
 Qualifications of, generally, 48
 Salary as fixed by commission, 48

HARBOR REVENUE FUNDS

Generally, 48.1

HEALTH

Advisory board, see **Health Advisory Board**
 Business affecting, licenses for, 24
 Department of, see **Public Health Department**
 Director, see **Director of Health**
 Residence excused by reasons of, 7
 Service, see **Health Service**

HEALTH ADVISORY BOARD

Chief administrative officer as appointing, 61
 Compensation, service of members without, 61
 Creation of, 61
 Dentists as members of, 61
 Membership of, 61
 Physicians as members of, 61
 Recommendations on public health matters, 61
 Reports on public health matters, 61
 Terms of office of, 61

HEALTH OFFICER

Director of public health as having powers and duties of, 61

HEALTH SERVICE

Adequacy of medical care and fees, review of, 172.1 subd 3 (a) 4
 Administration—
 generally, 172.1 subd 1
 power of board as to, 172.1 subd 3 (b)
 Admission to system, power as to, 172.1 subd 3 (c)
 Appeals in fee and medical care revisions, 172.1 subd 3 (a) 4
 Appliances as medical care, 172.1 subd 5
 Appropriation for prohibited, 172.1 subd 6
 Board of education employees as members of system, 172.1 subd 1
 Board, see **Health Service Board**
 Choice as to physician, etc., 172.1 subd 3 (a) 1
 City contributions prohibited, 172.1 subd 6
 Claims limited to health fund, 172.1 subd 6
 Compensation, see *infra*, Fees and compensation

INDEX

HEALTH SERVICE—Cont'd

- Contract, power of board as to, 172.1 subd 3 (b)
- Creation of system, 172.1 subd 1
- Deductions for fund, 172.1 subd 4
- Dental care as medical service, 172.1 subd 5
- Dependents, provisions for participation, 172.1 subd 3 e
- Disbursement from funds, 172.1 subd 4
- Drugless healing as medical care, 172.1 subd 5
- Emergency care in public facilities, 172.1 subd 5
- Employees—
 - appointment by board, 172.1 subd 3 d
 - civil service, subject to, 172.1 subd 3 d
 - compensation fixed by board, 172.1 subd 3 d
 - continuance in positions after military leaves, 172.1 subd 3 d
 - list of positions submitted each year, 172.1 subd 3 d
 - payrolls covering positions, 172.1 subd 3 d
 - retired employee participating, 172.1 subd 3 e
 - salaries and wages fixed by board, 172.1 subd 3 d
 - salary ordinance listing positions and salaries, 172.1 subd 3 (d)
- Exclusive contracts for medical care prohibited, 172.1 subd 3 (a) 1
- Exemption from system—
 - board having power as to, 172.1 subd 1
 - other medical care, for, 172.1 subd 1
 - power as to, 172.1 subd 3 (c)
 - prayer healing adherents, 172.1 subd 1
 - religious beliefs, for, 172.1 subd 1
- Expenses borne exclusively by health funds, 172.1 subd 6
- Fees and compensations—
 - rates, review and approval by retirement board, 172.1 subd 3 (a) 3
 - retirement board reviewing and approving, 172.1 subd 3 (a) 3
 - revision of, 172.1 subd 3 (a) 4
 - right of physicians to serve at uniform rates, 172.1 subd 3 (a) 2
- Free choice of physicians, etc., 172.1 subd 3 (a) 1
- Funds—
 - administration of, 172.1 subd 4
 - claims limited to, 172.1 subd 6
 - controller's power as to, 172.1 subd 4
 - deduction for, 172.1 subd 4
 - disbursement from, 172.1 subd 4

HEALTH SERVICE—Cont'd

- Funds—Cont'd
 - expenditures from, 172.1 subd 4
 - expenses borne exclusively by, 172.1 subd 6
 - investment of, 172.1 subd 4
 - monthly payments to, 172.1 subd 4
 - use by board, power of, 172.1 subd 3 (b)
- Hearings as to medical care adequacy, 172.1 subd 3 (a) 4
- Hospitalization as medical care, 172.1 subd 5
- Indemnification of cost, power to adopt plans, 172.1 subd 3 (a)
- Insurance against cost, power to adopt plans, 172.1 subd 3 (a)
- Investment of funds, 172.1 subd 4
- Medical care—
 - adequacy reviewed at public hearings, 172.1 subd 3 (a) 4
 - appliances included in, 172.1 subd 5
 - choice as to physician, etc., 172.1 subd 3 (a) 1
 - definition of, 172.1 subd 5
 - dental care included in, 172.1 subd 5
 - drugless healing included in, 172.1 subd 5
 - emergency care in public health facilities, 172.1 subd 5
 - exclusive contracts prohibited, 172.1 subd 3 (a) 1
 - free choice as to, 172.1 subd 3 (a) 1
 - hospitalization included in, 172.1 subd 5
 - indemnification of cost, board's power to adopt plans for, 172.1 subd 3 (a)
 - insurance against cost, power to adopt plans for, 172.1 subd 3 (a)
 - medicines included in, 172.1 subd 5
 - nursing services included in, 172.1 subd 5
 - optical treatment included in, 172.1 subd 5
 - physicians services including, 172.1 subd 5
 - plans, board's power to adopt, 172.1 subd 3 (a)
 - professional conduct law governing, 172.1 subd 5
 - public health facilities, use for, 172.1 subd 5
 - revisions as to, 172.1 subd 3 (a) 4
 - right of physicians etc. to serve at uniform rate, 172.1 subd 3 (a) 2
 - surgeons services included in, 172.1 subd 5
- Medical director
 - appointment by board, 172.1 subd 3 d
 - salary fixed by board, 172.1 subd 3 d

HEALTH SERVICE—Cont'd

Medicines as medical care, 172.1 subd 5
Membership in system, 172.1 subd 1
Monthly payments to fund, 172.1 subd 4
Nursing as medical care, 172.1 subd 5
Optical treatment as medical care, 172.1 subd 5
Payrolls for employees, 172.1 subd 3 d
Physicians—
 right to serve at uniform rates, 172.1 subd 3 (a) 2
 service as medical care, 172.1 subd 5
Plans, power of board as to, 172.1 subd 3 (b)
Powers of retirement board, exercise of, 172.1 subd 3 (a) 6
Prayer healing adherents exempted from, 172.1 subd 1
Professional conduct law governing, 172.1 subd 5
Public health facilities used for, 172.1 subd 5
Religion, exemption from system on ground of, 172.1 subd 1
Retired employees participating in, 172.1 subd 3 e
Retirement board—
 appeals to in fee and medical care determination, 172.1 subd 3 (a) 4
 failure to act as approval, 172.1 subd 3 (a) 3, 172.1 subd 3 (a) 4
 fees and compensations reviewed and approved by, 172.1 subd 3 (a) 3, 172.1 subd 3 (a) 4
 medical care determination reviewed by, 172.1 subd 3 (a) 4
 powers, duty to exercise, 172.1 subd 3 (a) 6
Retirement system members as members, 172.1 subd 1
Right of physicians, etc., to serve at uniform rate, 172.1 subd 3 (a) 2
Salaries and wages of employees, 172.1 subd 3 d
Salary deductions for, 172.1 subd 4
School department employees as members, 172.1 subd 1
Surgeons service included as medical care, 172.1 subd 5
Teachers as members, 172.1 subd 1
Temporary employees participating in, 172.1 subd 3 e
Uniform vote, right to serve at, 172.1 subd 3 (a) 2
Voluntary membership in system, power of board as to, 172.1 subd 3 (c)

HEALTH SERVICE BOARD

Adequacy of medical care and fees reviewed by, 172.1 subd 3 (a) 4
Administration, power of, 172.1 subd 3 (b)
Admission to system, power as to, 172.1 subd 3 (c)
Appeals from decisions of, 172.1 subd 3 (a) 4
Appointing officer for, president as, 172.1 subd 2
Ballots for electing members, 172.1 subd 2
Contract, power of, 172.1 subd 3 (b)
Election by members of system, 172.1 subd 2
Employees appointed by, 172.1 subd 3 d
Exemptions from system, power to grant, 172.1 subd 3 (c)
Funds administered and invested by, 172.1 subd 4
Health service administered by, 172
Indemnification plan, power to adopt, 172.1 subd 3 (a)
Insurance plans, power to adopt, 172.1 subd 3 (a)
Medical care plans, power to adopt, 172.1 subd 3 (a)
Nomination of members, 172.1 subd 2
Number of members, 172.1 subd 2
Official bond of members, 172.1 subd 2
Plans, power to effectuate, 172.1 subd 3 (b)
Powers of, generally, 172.1 subd 3 (a) et seq
Rules and regulations, power as to, 172.1 subd 3 (c)
Submission to by system members and medical care agencies, 172.1 subd 3 (a) 5
Terms of office for, 172.1 subd 2
Vacancies, filling in for unexpired term, 172.1 subd 2

HEARINGS

Abandonment of street railways as subject to, 132.1
Adoption of proposed budget after, 72
Appeals—
 license and permits cases, 39
 zoning change decisions, 117, 117.1
Appropriation ordinance as proposed, 72
Budget estimates, mayor holding hearings on, 69
Chief administrative officer, hearing for removal of, 59
Departmental affairs subject to, 21
Fees for medical care reviewed by, 172.1 subd 3 (a) 4

INDEX

HEARINGS—Cont'd

- Fire and police disciplinary procedure, 155
- Investigation of departments, hearings of, 21
- License and permit appeals, 39
- Master plan amendment, hearings as to, 116
- Medical care adequacy reviewed at, 172.1 subd 3 (a) 4
- Offices, hearings on conduct of, 21
- Patrol special police officers suspended or dismissed on, 35.10
- Permit appeals, 39
- Power not restricted, 22
- Proposed budget—
 - adopted after hearing, 72
 - hearing date fixed, 72
- Public hearing of charges against employees, 154
- Removal of officers, hearing for, 11, 154
- Superintendent of schools, removal of, 136
- Suspension of employees, hearings as to, 154
- Teachers, hearing for removal, 135
- Time limit for zoning change appeals, 117, 117.1
- Utilities rates changes subject to, 130
- Welfare commission removal proceedings, 61.1 subd 4
- Zoning—
 - changes, hearings as to, 117, 117.1
 - ordinance hearings, 117.1
 - variance hearings, 117.3

HEROIC CONDUCT

- Fire department reward for, 36
- Police department reward for, 35.11

HETCH-HETCHIE PROJECT

- Public utilities commission, department under, 122

HIGHWAYS

- See **Streets and Highways**

HOLIDAYS

- Fire department members—
 - entitlement to, 36
 - service during, 36
- Municipal railway platform employees and operators, overtime for, 151.3 (E)
- Police department members entitled to, 35.5 1/2 (h)

HORTICULTURAL COMMISSIONER

- City officer, status as, 4

HOSPITALIZATION

- Civilian defense workers, injuries to, 9

HOURS OF WORK

- Fire department hours limited, 36

HOUSING

- Project plans submitted and acted upon, 118

I

ILL HEALTH

- Residence excused for, 7

IMPROVEMENTS

- See **Public Works and Improvements**

INCUMBENTS

- Citizens' emergency relief committee, continuing, 61.1 subd 7
- Civil service commission continuing in office, 140
- Civil service, continuance of employment under, 62
- Elective offices made appointive, incumbents subject to civil service, 62
- Library department incumbents deemed appointed under civil service, 43
- Recreation and park department employees deemed appointed under civil service, 41
- Reduction of salary prohibited, 71
- Underwriters fire patrol members deemed appointed under civil service, 38.2
- Utilities employees deemed appointed under civil service, 125
- War memorial trustees, term of office of, 44

INDEXES

- Ordinances, indexes for, 12
- Resolutions, indexes for, 12

INFLAMMABLE GOODS

- Fire marshal enforcing laws as to, 37

INITIATIVE, REFERENDUM AND RECALL

- Affidavits as to signed petitions, 180
- Amendatory ordinances exempt from referendum, 179
- Amendment of measures, provisions as to, 185
- Appropriation ordinances exempt from referendum, 179
- Arguments—
 - favoring, presentation of, 183
 - opposing, presentation of, 183
- Ballots—
 - form of, 184
 - "Yes" and "No" following statement on, 184
 - statements on, 184

SAN FRANCISCO CHARTER

INIT., REFER., AND RECALL—

Cont'd

Board of education members subject to recall, 179
 Borough, see **Boroughs**
 Budget ordinances exempt from referendum, 179
 Challenge of signatures on petitions, 180
 Charter amendment petitions, filing and delivery, 183
 Chief administrative officers subject to recall, 179
 Choice between competing and conflicting measures, 185
 City attorney preparing statements as to, 184
 Competing measures, choice between, 185
 Conflicting measures, choice between, 185
 Controller's statement as to cost, 183
 Controller subject to recall, 179
 Cost, controller's statement as to, 183
 Denial of signing petition, 180
 Effective date—
 after favorable vote, 184
 ordinances subject to referendum, 16
 Elections, compliance with charter required, 186
 Elective officers subject to recall, 179
 Emergency measures restricted by initiative, 16
 Emergency powers ordinances exempt from referendum, 179
 Favorable vote, effective date upon, 184
 Formal defect not invalidating elections, 186
 Franchises as subject to, 123, 179
 Fund for special election, 181
 General election measures submitted at, 182
 Mailing of copy to voters, 183
 Majority vote on, 184
 Officers statement of justification, 183
 Opposing arguments, presentation of, 183
 Ordinances subject to, generally, 179
 Pamphlets—
 arguments, containing, 183
 cost statement of controller in, 183
 Petitions—
 generally, 179
 affidavits as to signing, 180
 arguments, presentation of, 183
 challenge of signatures on, 180
 denial of signing, 180
 general law governing, 180
 presumptions as to validity, 180
 revocation of signatures, 180
 rules and regulations governing, 180

INIT., REFER., AND RECALL—

Cont'd

Petitions—Cont'd
 signature withdrawn from, 180
 special election requested by, 182
 state law as governing, 180
 Policy declaration subject to referendum, 179
 Power as to, 179
 Preference as to competing and conflicting measures, 185
 Presumption as to validity of petitions, 180
 Printing of copies for voters, 183
 Protest of ordinances by, 179
 Public utilities bond elections, 105
 Public utilities commission members subject to recall, 179
 Reasons for recall demands, statement of, 183
 Recall—
 ineligibility for office after, 184
 reimbursement of officer where retained, 184
 successor appointed in event of, 184
 Reimbursement of officer not recalled, 184
 Rejection of legislative act, 179
 Repeal, provisions as to, 185
 Revocation of signatures on petitions, 180
 Salary ordinance exempt from referendum, 179
 Sample ballot—
 mailing to voters, 183
 officers statement of justification, 183
 printing of, 183
 reasons for recall stated, 183
 Signatures on petitions withdrawn, 180
 Special elections—
 generally, 174, 179
 fund for, 181
 holding of, 182
 ordinance directing, 182
 time for, 182
 State election, measures submitted at, 182
 State law—
 applicability of, 174
 petition governed by, 180
 Substantial compliance with charter required, 186
 Taxation—
 controller's statement as to, 183
 ordinances exempt from referendum, 179
 Tie vote, resubmission on, 185
 Time—
 limit on recall, 179
 special election, 182
 Utilities leases or sales subject to, 123
 Veto, provisions as to, 185

INDEX

INQUIRY

See also **Investigations**
Chief of police as having power of, 24
Departmental affairs subject to, 21
Offices, inquiries on conduct of, 21
Power not restricted, 22
Tax collector having power of, 24

INSANITY

Vacancy in office by, 6

INSPECTIONS

Chief of police, power of, 24
Fees for licenses as covering cost of, 24
Fire prevention and public safety, 38
Ordinance providing for, 24
Public safety, 38
Tax collector, power of, 24

INSPECTORS

See **Bureau of Inspectors**

INSTITUTION HEADS

Appointing officers, as, 20
Checking of purchases, duty of, 20
Functions, continuance of, 2
Requisitions for purchases, power to issue, 20

INSTITUTIONS

Revolving funds for, 75

INSURANCE

Exhibits—
M. H. De Young museum, 51
palace of legion of honor, 50
Utilities reserve fund appropriated, 127

INTER-DEPARTMENTAL SERVICES

Controller prescribing payments methods for, 77

INTEREST (contracts, etc.)

Collusion, penalties, 100
Prohibited, 222

INTEREST (money)

Appropriations subject to administration by chief administrative officer, 72
Budget including interest on borrowed money, 81
Definition, under retirement provisions, 165.2 (A)
Deposited money, interest accruing to city, 82
Estimates of required amount for, 69, 72
Improvement bond interest paid by special assessment, 110

INTEREST (Money)—Cont'd

Market street railway purchase price balance as bearing, 119.1 par. 5 (a)
Maximum tax levy as exclusive of, 78
Notes of city, supervisors fixing interest on, 81
Notes securing loans to city, interest on, 81
Public utilities bonds interest met by bond issuance, 102
Revolving fund moneys used for special assessment projects, interest added to contracts, 110
Tax levies for payment of, 78
Temporary transfers or loans, interest on, 81
Utilities interest fund appropriated, 127

INTEREST FUND

Harbor revenues producing, 48, 48.1

INTERFERENCE (administrative affairs)

Prohibition as to, 22

INTERNAL CHECK

Controller as devising, 64

INVENTORIES

Purchaser of supplies maintaining, 88

INVESTIGATION

See also **Inquiries**
Chief of police as having power of, 24
Claims investigated by controller, 85
Fire bureau, see **Bureau of Fire Investigation**
License and permit appeals, 39
Master plan for, 116
Tax collector as having power of, 24

INVESTMENT

Trust fund, investment of, 82

J

JOINT BOARD of Fire and Police Commissioners

Electricity department chief having powers and duties of, 61

JOINT COMMISSION

Electricity department commission, abolishment of, 61

JOINT CUSTODY ACCOUNT

Record of moneys and securities in joint custody safe, as, 83
Withdrawals on as verified, 83

SAN FRANCISCO CHARTER

JOINT CUSTODY SAFE

- Balance as verified, 83
- Moneys needed as withdrawals from, 83

JUDGMENT

- Budget estimates submission to mayor including statement of, 69

JUNK DEALERS

- Inspection of, 24

JURY SERVICE

- Retired person permitted, 163 (a), 165.2 (J), 168.1.12, 171.1.12
- Salary and wage payments affected by, 150

JUVENILE COURT PROBATION OFFICER

- Appointing officer, as, 58
- Appointment of, 58
- Assistant, deputies and employees as appointed by, 58
- Civil service as applicable to assistant and employees, 58
- Continuance of employees under civil service, 58
- Pension provisions of charter applicable to, 58
- Retirement provisions of charter applicable to, 58
- Salaries and wages of, 58

JUVENILE PROBATION BOARD

- City officers, members as, 4
- Continuance of powers and duties under state law, 58
- Officers of city, members as, 4
- Probation officers employees confirmed by, 58

L

LAND

- Harbor lands as leased, 48
- Real property, see **Real Property**

LANDSCAPE ARCHITECT

- Appointment by mayor, 45

LAY-OFFS

- See also **Reduction in Force**
- Fire boat personnel due to conversion or discontinuance, 38.3
- Military service returnees as causing, 153
- Retirement contributions, cession as to, 165.2 (F)
- Suspension and dismissal provisions of charter not affecting rules as to, 154

LAW ENFORCEMENT

- Mayor's responsibility for, 25

LAW LIBRARY

- Board of trustees for, 4, 57
- Board of supervisors providing for, 57
- Fees, collection of, 57
- Free access to, 57
- Fund—
 - collections for, 57
 - expenditures from, 57
- Furnishings for, 57
- Librarian for, 57
- Location of, 57
- Management of, 57
- Mayor as ex officio trustee of, 57
- Quarters for, 57
- Salaries and wages of employees of, 57, 151
- Superior court judges as ex officio trustees, 57
- Trustees—
 - generally, 57
 - city officers, as, 4
- Use of, persons entitled to, 57
- Vacancies on trustees board, filling of, 57

LAW PRACTICE

- Assistant attorneys, qualification for job, 34
- City attorney, qualification for office, 26
- District attorney, qualification for office, 29
- Municipal judges prohibited from, 53
- Public defender, qualification for office, 33

LAWS

- Power to make and enforce, 2

LEASES

- Airport property, 93
- Board of supervisors as authorizing, 93
- Civil auditorium, power to lease, 61
- Director of property in charge of, 91
- Exposition auditorium, power to lease, 61
- Harbor facilities, power as to, 48
- Public utilities commission as leasing
 - water department property, 93
- Recreation and park department powers as to, 42
- Referendum as to utility leases, 123
- Stadiums and recreational fields, 42
- Utilities leased, status of employees of, 125.1
- Utilities leases by board of supervisors, 123
- Water department property leased for agriculture, 93

INDEX

LEAVE OF ABSENCE

Accumulation of sick leave, 153
American Red Cross, service in, 153.1
Civil service commission rules governing, 153
Disability leaves, 153
Illness, leaves due to, 153
Military, see **Military Leaves**
National defense, for, 153
Other employment, leaves for, 153
Promotion, leave for, 153
Red Cross, service in, 153.1
Rules governing, 153
Rules of commission governing, 153
Rule 31.2 leaves as ratified, 153
Sea duty as licensed officer, for, 153
Sick leave, 153
Time limit for, 153
War effort leaves, 153

LEGACY

Investment of, 82

LEGAL CAPACITY

City and county, legal capacity, 2

LEGAL PROCEEDINGS

Actions, see **Actions**

LEGION OF HONOR

Palace, see **California Palace of Legion of Honor**

LEGISLATIVE ACTS

Ordinances as means of, 13

LIABILITIES

Accounts and accounting procedure to record, 64

LIBRARIAN

See **Law Library ; Library Department**

LIBRARY

Borough, see **Boroughs**
Commission, see **Library Commission**
Department, see **Library Department**
Law, see **Law Library**
Purchases by, 88
Taxation to support, 78

LIBRARY COMMISSION

Compensation, service without, 43
Duties of, generally, 43
Ex officio members of art commission, chairman as, 45
Librarian, appointment of, 43
Membership of, 43
Number of members of, 43

LIBRARY COMMISSION—Cont'd

Powers of, generally, 43
Secretary—
 appointment of, 43
 civil service exemption, 43
Successors of board of library trustees, as, 43
Terms of office of members of, 43

LIBRARY DEPARTMENT

Appointing officer, librarian as, 43
Chief executive, librarian as, 43
Civil service, positions as subject to, 43
Commission as managing, 42
Incumbents deemed appointed under civil service, 43
Librarian—
 appointing officer, as, 43
 appointment of, 43
 chief executive, as, 43
 civil service, exemption from, 43
Management by commission, 43
Secretary—
 appointment of, 43
 civil service exemption, 43

LIBRARY TRUSTEES

Generally, see **Board of Library Trustees**

LICENSES AND PERMITS

Appeal board, see **Board of Permit Appeals**
Application required for, 24
Board of appeals, see **Board of Permit Appeals**
Building permit, issuance upon approval by fire prevention bureau, 38
Buildings under recreation and park commission, use of, 42
California street railroad company permit transferred to city, 119.4 (c)
City planning commission approval of, 24
Denial, appeal of, 39
Fees for, department heads recommendations as to, 20
Issuance of—
 police chief power to refuse, 35.6
 regulation by ordinance, 24
Market street railway licenses transferred with title, 119.1 par 5 (c)
Operating permit of market street railway cancelled, 119.1 par 5 (c)
Ordinances regulating, 24
Police chief power as to, 35.6
Recreation and park buildings, use of, 42
Revocation—
 appeal of, 39
 police chief power as to, 35.6
 regulation by ordinance, 24
Spur tracks permit, 114

SAN FRANCISCO CHARTER

LICENSES TAXES

Businesses subject to, 24

LIENS

Notes of city as liens on tax collections, 81

LIMITATION OF ACTIONS

Waiver of statutes of, 13.1

LIMITED TENURE APPOINTMENTS

Authority, expiration after repeal of ordinance, 145.1

Civil service status of appointees, 145.1

Duration of, 145.1

Emergencies, charter provisions operative during, 145.1

Examinations for, 145.1

Municipal railway runs assignments affected by, 145.1

Non-civil service appointment prohibited when eligibles available, 145.1

Ordinance as to, 145.1

Termination of, 145.1

LITTERATEUR

Appointment by mayor, 45

LOANS

City, loans to, see **Borrowing Money**

M

MAGISTRATE

Bonds, approval of, 30

Warrant and bond officer acting subject to, 30

MAINTENANCE

Harbor maintenance paid from revenue fund, 48.1

MAJORITY

Board and commission majorities, definition of, 19

Quorum of boards and commissions constituted by, 19

MANAGER OF UTILITIES

Administrative power of, 124

Appointment of, 124

Chief executive, as, 124

Department head, acting as, 124

Planning commission, ex officio member of, 115

Powers of, 124

Qualifications required for position of, 124

Salary of, 124

MARINE CORPS

Veterans preference in examinations, 145.01

MARINE ENGINEERS

Fire boats engineers, reassignment of, 38.3

MARKET STREET RAILWAY

Abandonments, agreement as to, 119.1 par 5 (e)

Accident fund payments from extension fund, 119.1 par 3 (a)

Alterations, agreements as to, 119.1 par 5 (e)

Application of moneys paid to, 119.1 par 4

Appropriations from extension of, 119.1 par 3 (a) - (d)

Balance of purchase price—
bond issue for, 119.2

current revenues, payment from, 119.2

extension fund, payment from, 119.1
pars 3, 5 (e), 6

municipal railway funds appropriated for, 119.1 par 6

taxation for prohibited, 119.1 par 6

Bond issue for purchase price, 119.2

Budget relating to unified operation, 119.1
par 3

Changes in, agreements as to, 119.1 par 5
(e)

Charter provisions—

not applicable to prior payment, 119.1
par 3

prevailing, 119.1 par 5

Compensation fund payments from extension fund, 119.1 par 3 (a)

Consolidation with present railway, 119.1
par 3

Contract for acquisition—

additional terms and conditions, 119.1
par 5 (e)

compliance with, duty, 119.1 par 5 (e)

operation of railway as term of, 119.1
par 5 (e)

Extension, agreement as to, 119.1 par 5
(e)

Extension fund—

appropriations from, 119.1 par 3 (a) -
(d)

balance of purchase price paid from,
119.1 pars 3, 5 (e), 6

demands for payments from as duty of
utilities commission, 119.1 par 4

name of, 119.1 par 3

payment limited to funds from, 119.1
par 5 (e)

purchase price balance paid from, 119.1
par 5 (a)

INDEX

MARKET STREET RY.—Cont'd

Extension Fund—Cont'd
 revenues set aside for, 119.1 par 3
 warrants as basis of payments from, 119.1 par 4
 Extension of municipal railway, acquisition as, 119.1 par 5, 119.1 par 7
 Fares as uniform until payment in full, 119.1 par 8
 Fund charges paid from extension fund, 119.1 par 3 (a)
 General fund use for as prohibited, 119.1 par 6
 Increase of fares, 119.1 par 5 (d)
 Initial payment for, 119.1 par 5 (a)
 Insurance fund payments made from extension fund, 119.1 par 3 (a)
 Interest on unpaid balance—
 generally, 119.1 par 5 (a)
 payments limited to extension fund moneys, 119.1 par 6
 Interest of public as indicated by adopting charter provision relating to, 119.1 par 2
 Licenses transferred with title, 119.1 par 5 (c)
 Maintenance cost as paid from extension fund, 119.1 par 3 (b)
 Minimum fares until payment for property, 119.1 par 5 (d)
 Municipal railway extended by, 119.1 par 1
 Operating expenses paid from extension fund, 119.1 par 3 (a), 119.1 par 6
 Operating permit cancelled, 119.1 par 5 (c)
 Operation agreement in contract, 119.1 par 5 (e)
 Operation by utilities commission prior to payment for, 119.1 par 3
 Payments for—
 application of, 119.1 par 4
 charter provisions not applicable prior to, 119.1 par 3
 consolidation with municipal railway upon, 119.1 par 3
 limitation to extension fund, 119.1 par 5 (e), 119.1 par 6
 revenues not applicable to charter provisions prior to, 119.1 par 3
 Pension charges paid from extension fund, 119.1 par 3 (a)
 Permits transferred with title, 119.1 par 5 (c)
 Public interest and necessity existing in acquisition of, 119.1 par 2
 Public utilities commission as operating prior to payment, 119.1 par 3

MARKET STREET RY.—Cont'd

Purchase price—
 balance, see supra, Balance of purchase price
 interest born by, 119.1 par 5 (a)
 maximum, contract for, 119.1 par 5 (a)
 Ratios of revenues compared with municipal railway as exact ratios, 119.1 par 3 (d)
 Reconstruction and replacement fund appropriation from extension fund, 119.1 par 3 (c)
 Repairs as paid from extension fund, 119.1 par 3 (b)
 Revenue accounting prior to payment for, 119.1 par 3
 Revenues—
 "Municipal railway-Market street extension fund" for, 119.1 par 3
 not subject to certain charter provisions, 119.1 par 3
 San Mateo county, transportation to as furnished by acquisition, 119.1 par 1
 Tax levy for payment as prohibited, 119.1 par 6
 Transfer privileges universal, 119.1 par 5 (d)
 Unified operation with municipal railway, 119.1 par 3
 Unified system provided by acquisition of, 119.1 par 1, 119.1 par 5 (d)
 Unpaid balance of purchase price bearing interest, 119.1 par 5 (a)
 Warrants as basis of payments from extension fund, 119.1 par 4

MASTER PLAN

Amendment of, 116
 Board of supervisors, recommendations, 116
 Building intensity standards included in, 116
 Capital improvement project proposals, reports as to affect of, 69.1
 Departments powers and duties as to, generally, 116
 Duty to adopt and maintain, 116
 Hearings as to amendments of, 116
 Information as to, duty to furnish, 116
 Investigation and studies for, 116
 Items composing, 116
 Mayor's recommendations as to, 116
 Outside land included in, 116
 Population—
 density standard indicated, 116
 growth estimates included, 116
 Preparation of, generally, 116
 Public interest in, promoting of, 116

MASTER PLAN—Cont'd

Publishing and distribution of, 116
 Recommendations of commissions included in, 116
 Resolutions for amendment of, 116
 Scope of, generally, 116
 Understanding of, promotion, 116

MAYOR

Abolishment of departments as recommended by, 9
 Absence of as tolling time limitations, 14
 Acting mayor, see **Acting Mayor**
 Annual executive budget, duties as to, 25
 Annual message to supervisors, 25
 Annual reports of department operation submitted to, 19 (e)
 Appointees as removed by, 11
 Appointment to city service after term, 5
 Appropriations, reduction of to meet emergency, 70.1 subd 6
 Approval of resolutions and ordinances, 14
 Audit of account of controller's books, copy of report received by, 68
 Board members appointed by, 25
 Board of education nomination and appointment, 49, 134
 Board of permit appeals appointment, 39
 Board of trustees of war memorial, appointment, 44
 Bonds of officers and employees in amounts approved by, 19 (i)
 Borough, council members appointed by, 197
 Borrowing money as approved by, 81
 Budget estimates—
 segregation for mayor, 69
 transmission to mayor, 69
 Budget message of—
 generally, 72
 printed copies for official use and public demand, 72
 Budget, review and submission of, 25
 California palace, ex officio trustee of, 50
 California street railroad budget, approval of, 119.4
 Capital improvement programs recommendations to, 69.1
 Chief administrative officer, appointment of, 59
 Chief executive officer, as, 25
 City planning commission appointed by, 49
 Civil service commission appointed by, 49, 140
 Clearing house representative recommended by, 84
 Combining department functions by, 20

MAYOR—Cont'd

Commissions members appointed by, 25
 Compensation, fixing of, 25
 Complaints, duties as to, 25
 Consolidated budget estimates transmitted by, 72
 Controller—
 appointment of, 63
 official bond, custody and examination of, 67
 reports sent to mayor, 65
 Co-operation and co-ordination, duties as to, 25
 Cost reports of departments to, 19 (e)
 Creation of departments by, 9
 Criminal convictions of officers, duty upon, 11
 Department affairs, power to investigate, 21
 Departments supervised by, 25
 Disapproval of resolutions and ordinances, 14
 Draft of appropriation ordinance to supervisors, 72
 Duties of, generally, 25
 Elective officer, as, 5, 25
 Emergency—
 declaration of, 70.1
 power in, 25
 Executive secretary for, 25
 Expenditures reports of department to, 19 (e)
 Expenses of office, appropriation for, 25
 Fire commission, appointment of, 36
 Franchises, power to postpone action on, 25
 Harbor commission, appointment of, 47
 Investigation of department, power as to, 21
 Law enforcement, responsibility for, 25
 Law library ex officio trustee, as, 57
 Library commission, appointment of members, 43
 Limitation upon appointment after term, 5
 Market street railway—
 budget, approval of, 119.1 par 3
 contract, duties as to, 119.1 par 5
 Master plan amendment copies to, 116
 Message to board of supervisors, 25
 M. H. De Young museum, ex officio trustee of, 51
 Municipal election for, 5
 Number of terms, 5.1
 Officers appointed by, 25
 Official bond of—
 controller custody of, 67
 necessity for, 25

INDEX

MAYOR—Cont'd

Official bonds—
 amounts approved, 19 (i)
 controller's custody and examination of, 67
 suspending officials for insufficiency of, 67
Ordinances transmitted to, 14
Planning commission members appointed by, 115
Police commission, appointment of, 35
Powers and duties of, generally, 25
Proposed budget transmitted to board of supervisors by, 72
Public utilities commission appointed by, 49, 120
Public works costs reported to, 95
Recalled officer, appointing successor to, 184
Recommendations to board of supervisors, 25
Reconsideration of measures requested by, 14
Record of board and commission meetings forwarded to, 19
Recreation and park commission appointments, 40
Reduction of appropriations by, 14
Reports of department operation submitted, 19 (e)
Resolutions transmitted to, 14
Retirement board appointed by, 49, 159
Revolving funds recommended by, 75
Salary of, 25
Seat on board of supervisors privilege of, 25
Secretaries for, 25
Service of process upon, 25
Stenographer for, 25
Supervision of department, duty as to, 25
Suspension of officers by, 11
Transfer of department functions by, 20
Tax reduction to meet emergencies, 70.1 subd 6
Term of—
 length, 5
 number allowed, 5.1
 successive terms, 5.1
Time for action on emergency measures, 14
Unanimous measures, time for action on, 14
Unencumbered balance transfers approved by, 77
Vacancy in office, filling of, 25
Veto—
 appropriation ordinance, 72
 resolutions and ordinances, 14

MAYOR—Cont'd

Voting power in boards and commissions, 25
War memorial trustees, appointment of, 44
Welfare commission appointed by, 61.1 subd 2
Welfare department members—
 appointment of, 61.1 subd 3
 removal of, 61.1 subd 4

MEDICAL CARE

Civilian defense workers, injuries to, 9
Health service, see **Health Service**

MEDICAL EXAMINATIONS

Residence outside city as requiring, 7

MEETINGS

Attendance, compelling of, 19
Boards and commissions, 19 (f)
Board of supervisors, 10, 19
California palace trustee board, 50
Changing place of, 19 (f)
M. H. De Young memorial museum trustees, 51
Notice of special meetings, 19 (g)
Penalty for absence from, 19
Public, opening to, 19 (f)
Special meetings provided by ordinance, 19 (g)

MEMORIALS

California palace of legion of honor, see **California Palace of Legion of Honor**
M. H. De Young museum, see **M. H. De Young Memorial Museum**
War, see **War Memorial**

M. H. DE YOUNG MEMORIAL MUSEUM

Accounts, duty to keep, 51
Additional trustees for, 51
Administration in accordance with grant, 51
Appropriation for, 51
Buildings for, 51
Civil service as applied to employees of, 51
Compensation, trustees serving without, 51
Control in accordance with grant, 51
Curators for, 51
Director for, 51
Employees for, 51
Exhibits, insurance of, 51
Fund, appropriation for, 51
Mayor as ex officio trustee of, 51
Meetings of trustees, 51

M. H. DE YOUNG MEM. MUSEUM—

Cont'd

- Military leaves affecting service in, 51
- Name known in perpetuity, 51
- Park commission president as ex officio member of, 51
- Perpetuity of name, 51
- Reports to controller, duty to make, 51
- Salaries standardization applying to employees of, 51
- Secretary for, 51
- Trustee board governing, 51
- Vacancies in trustee board, 51

MERITORIOUS CONDUCT

- Fire department reward for, 36
- Police department reward for, 35.11

MILEAGE

- Authorization by ordinance, 219

MILITARY LEAVES

- American red cross—
 - leaves deemed military, 153.1 (a)
 - service, granting leaves for, 153.1 (b)
- California academy employees—
 - civil service seniority affected, 52
 - continuance under civil service after leave, 50
- City attorney employees continued under civil service after, 34.1
- Continuing employment after, 153
- Disabilities incurred in, transfer for, 156
- Fire department service affected by, 35
- Fire investigation bureau service affected by, 38.01
- Fire prevention bureau service as affected by, 38.01
- Health service employees continued under civil service, 172.1 subd 3 d
- Lay-offs due to return from, governing of, 153
- M. H. De Young memorial museum employees continued under civil service, 51
- Orders filed with civil service commission, 153
- Peace time leaves, time for, 153
- Police department service affected by, 35.5
- Public defender employees continued under civil service after, 34.1
- Red cross leaves deemed as, 153.1 (a)
- Resuming employment after, 153
- Retirement service credit affected by, 158.3, 161, 161.1
- Retroactive effect of provisions as to, 153
- Salary right affected by, 153
- Salvage corps membership of underwriters fire patrol employees affected by, 38.2
- Seniority affected by, generally, 146.1, 153
- Service for city, term considered as, 153

MILITARY LEAVES—Cont'd

- Substitute examinations after, see **Substitute Promotional Examinations**
- Time limit upon, 153
- Underwriters fire patrol membership in salvage corps as affected by, 38.1
- War time leaves, time for, 153

MILITARY SERVICE

- Base pay affecting retirement contributions liability, 161.2
- Civil service exams—
 - completion after, 153
 - credit for service, 145
- Contributions to retirement during—
 - city, 161.2
 - members, 161.1
- Definition for retirement credit purposes, 161
- Disability affecting retirement service computations, 161
- Eligibles list standing affected by, 153
- Incompletion of civil service exams due to, 153
- Interruption in civil service exams due to, 153
- Lay-offs by return of eligibles, 153
- Leaves, see **Military Leaves**
- Pay affecting retirement contributions of members during, 161.2
- Peace-time draft affecting retirement service credits, 161
- Retirement credits for time in, 158.3, 161, 161.1, 168.1.9 (4), 171.1.9 (3)
- Retroactive effect of provisions as to, 153
- Return to city service, contributions after, 161.1

MISCONDUCT

- Official, see **Official Misconduct**

MISDEMEANORS

- Bail in cases of, 30

MONEYS

- Appropriations for transfers as pursued in withdrawals of, 85
- Available money, taxes levied as, 206
- Deposits, 82
- Internal checks relative to, 64
- Joint custody—
 - account for, 83
 - safe for, 83
- Ordinance providing for custody of, 83
- Payment into treasury, duty of, 150
- Public money other than city's, keeping of, 82
- Transfer for deposits at expense of depository, 82
- Treasury, duty to deliver to, 82

INDEX

MOORING OF VESSELS

Harbor commission as controlling, 48

MORAL TURPITUDE

Crimes, removal on conviction of, 6, 11

MORRISON PLANETARIUM

Admission fee for attendance at, 52
Management and operation by California Academy of Sciences, 52

MOTORCYCLES

Police officers compensation for service on, 35.5

MUNICIPAL CORPORATION

Boundaries, 1
San Francisco continued as, 1

MUNICIPAL COURT

Annual reports, 54
Bailiffs detailed by sheriff, 55
Charter prescribing constitution and regulation of, 53
Civil service applicable to personnel of, 55
Clerk—
city officer, clerk as, 4
duties of, generally, 55
general law prescribing powers and duties of, 55
law library fees, collection of, 57
state law prescribing powers and duties of, 55
Duties, constitution and general law governing, 53
Election of judges, 5
Employees of, 55
Fees collected as paid into treasury, 53
Judges—
clerk of court appointed by, 55
compensation as being in full for services, 53
election of, 5
elective officers, as, 5
law practice by as prohibited, 53
meetings of, 54
presiding judge, responsibility of, 53
terms of, 5
Monthly reports of, 54
Officer of city, clerk as, 4
Personnel appointed by clerk, 55
Powers, constitution and general law governing, 53
Presiding judge as supervising and directing the work, 53
Records as responsibility of presiding judge, 53

MUNICIPAL COURT—Cont'd

Reports—
board of supervisors, to, 54
responsibility for, 53
Retirement system membership of employees, 158.3
Rules and regulations as prescribed by judges, 54
Salaries and wages of employees, 55
Terms of judges, 5

MUNICIPAL ELECTION

See Elections

MUNICIPAL RAILWAY

Abandonment of line after unification, limitation on, 132.1
Appropriation of fund for Market street railway, 119.1 par 6
Budget for unified operation prior to Market street railway acquisition, 119.1 par 3

Bus operator—

conductors assigned to duty as, 125
days off allowed, 125
hours of work, 125
motor men assigned to duty as, 125
overtime for, 125
salaries standardization, see Salary Standardization
seniority governing appointments as, 125

Cable car operation with, 119.3

California street railroad as extension of, 119.4

Classification, standardized salary paid in accordance with, 151.3 (D)

Coach operators, see supra, Bus Operators

Consolidation of present system and Market street railway as constituting, 119.1 par 3

Extension of—

California street railroad properties as, 119.4

Market street railway as, 119.1 par 7

Extra pay for instructor duties, 151.3 (C)

Fares as uniform until Market street railway paid for, 119.1 par 8

Increase of fares, 119.1 par 5 (d)

Instructor duties, extra pay for, 151.3 (C)

Market street railway acquisition, see Market Street Railway

Maximum rates of pay to present employees under standardization, 151.3 (D)

Minimum fares until payment for Market street railway, 119.1 par 5 (d)

Monies appropriated for Market street railway payments, 119.1 par 6

MUNICIPAL RAILWAY—Cont'd

- Other cities—
 - schedules, certification of, 151.3 (A)
 - standardization in accordance with, 151.3 (A) - (F)
- Overtime for platform employees and operators, 151.3 (E)
- Platform employees—
 - days off allowed, 125
 - hours of work, 125
 - limited tenure service affecting assignment of runs, 145.1
 - overtime for, 125
 - salaries standardization, see **Salary Standardization**
- Public utilities commission, department under, 122
- Revenue accounting prior to payment for market street railway, 119.1 par 3
- Salary standardization, see **Salary Standardization**
- Street railways, see **Street Railways**
- Surplus of fund providing initial payment for Market street railway, 119.1 par 5 (a)
- Transfer privileges universal, 119.1 par 5 (d)
- Unified operation with market street railway, 119.1 par 3
- Unified system—
 - California street railroad acquisition as providing, 119.4
 - Market street railway properties providing, 119.1 par 1
- Uniform fares after Market street railway acquisition, 119.1 par 5 (d)

MUSEUMS

- M. H. De Young, see **M. H. De Young Memorial Museum**
- Purchases by, 88

MUSIC

- Advancement, art commission control of expenditures for, 46

MUSICIAN

- Appointment by mayor, 45

N

NAME

- San Francisco as name of city, 1

NATIONAL EMERGENCY

- Leave of absence for, 153
- Limited tenure appointments during, 145.1
- Retirement service credits affected by government service during, 160
- Sea duty as licensed officer, for, 153

NATURAL HISTORY MUSEUM

- Management and operation by academy of sciences, 52

NAVIGATION

- Harbor commission regulating, 48

NAVY

- Military leaves, see **Military leaves**
- Veterans preference in examinations, 145.01

NEWSPAPERS

- Official, see **Official Newspaper**

NIGHT UNIVERSITY

- Establishment, provisions for, 9

NOMINATIONS

- Elective officers, see **Elections**

NON-CIVIL SERVICE

APPOINTMENTS

- Approval required for, 20
- Chief administrative officer's approval required, 20
- Compensation, time limit upon, 149
- Immediate service necessity as occasion for, 149
- Leaves of absence for, 153
- Limited tenure appointee availability as precluding, 145.1
- No eligibles list as occasion for, 149
- Pending processing of eligible appointments, 149
- Termination by hiring civil service eligibles, 149
- Time limit for, 149

NON-PROFIT CORPORATION

- California academy of sciences as, 52

NON-RESIDENTS

- Appointment for lack of competent residents, 7

NON-TEACHING

- School non-technical positions under civil service, 135

NOTES

- Anticipation of income for repayment of, 81
- Borrowing money on, 81
- Date of payment fixed by supervisors, 81
- Fiscal year fund, repayment from, 81
- Form as prescribed by board of supervisors, 81

NOTES—Cont'd

- Insufficiency of funds, pro rata repayment in case of, 81
- Lack of fund, pro rata repayment in case of, 81
- Lien on tax collections, notes as, 81
- Place of payment as fixed by supervisors, 81
- Priority in repayment as prohibited where funds insufficient, 81
- Pro rata repayment in case of insufficient fund, 81
- Rate of interest fixed by supervisors, 81
- Sale of by supervisors, 81
- Tax collections as payment for, 81
- Time of payment as fixed by supervisors, 81

NOTICE

- Charges against accused person, notice of 154
- Civil service—
 - abolition or creation of positions, 143
 - appointment, character of, 148
 - charges against employees, 154
 - promotional exams, 144
- Ordinance, notice of title and subject matter of, 13
- Positions in department, creation or abolition of, 143
- Removal proceedings, pending, 154
- Special meetings, 19 (G)
- Street railway acquisition by city, intention of, 131
- Superintendent of schools, charges for removal of, 136
- Suspension of employee, reasons for, 154
- Utilities rates and fares changes, 130
- Zoning hearings notice published, 117, 117.1

NUISANCES

- Public, see **Public Nuisances**

O

OATHS

- Civil service commission, 140
- Investigation of department, power of oath in, 21
- Retirement board secretary or actuary administering, 159

OBLIGATIONS

- Appropriations and balance as prerequisite to incurrence of, 85, 86

OBSOLETE EQUIPMENT

- Exchange or sale by purchaser of supplies, 88

OFFICE HOURS

- Daily, 220
- Ordinances establishing, 220

OFFICERS

- Absence from state, permission for, 6
- Additional powers conferred by supervisors, 9
- Appointment by mayor, 25
- Board members appointed by mayor as, 4
- Board of education members as, 4
- Boards, administrative heads of, 19 (i)
- Bonds of, see **Official Bonds**
- Candidacy for election as forfeiture of appointment, 5
- Commission members appointed by mayor as, 4
- Commissions, administrative heads of, 19 (i)
- Compensations, continuance of, 2
- Continuance of positions, powers, rights, liabilities, 2
- County, see **County Officers**
- Dealing solely through, 22
- Discipline of, see **Discipline of Officers and Employees**
- Elective officers as officers, 4
- Forfeiture of office by candidacy for elective office, 5
- Functions, continuance of, 2
- Group bonding of, 8
- Ill health excusing residence, 7
- Investment of trust funds by, 82
- Number of classes of employment in, determination of, 9
- Positions continued, 2
- Powers conferred by supervisors, 9
- Removal of, see **Removal of Officers and Employees**
- Rules and regulations for, 19 (a)
- Salaries recommendations by, 71
- Salary standardization, subject to, 151
- Service records of, 152
- Suspension, see **Suspension of Officers and Employees**
- Temporary transfers or loans approved by, 81
- Who are, 4

OFFICIAL BONDS

- Approval by city attorney, 26
- Assessor's bond, 28
- Board of supervisors—
 - members, 10
 - officers and employees, 19 (i)
- Boards, administrative heads of, 19 (i)
- Borough, see **Boroughs**

OFFICIAL BONDS—Cont'd

City attorney—
 approving as to form, 26
 bond of, 26
Conditions provided by ordinance, 8
Controller's bond, 8, 67
District attorney's bond, 29
Examination by controller, 67
Form—
 approval by city attorney, 26
 ordinance providing for, 8
Group bonding, 8
Harbor commission members, 47
Health service board members, 172.1
 subd 2
Illegal demands on treasury as incurring
 liability on, 86
Mayor—
 amount of bond, 25
 approval of amounts, 19 (i)
 controller's custody of mayor's bond,
 67
 custody of controller's bond, 67
New bonds required upon insufficiency of,
 67
Ordinance prescribing, 8
Premium paid by city, 8, 19 (i)
Public defender, of, 33
Reports on by controller to mayor, 67
Sheriff, of, 32
Supervisors, 10
Suspension for insufficiency of, 67
Sureties on—
 generally, 8
 controller investigating, 67
Treasurer, of, 31

OFFICIAL DUTIES

Vacancy upon violation, 6

OFFICIAL MISCONDUCT

See also, **Prohibited Practices**
Appointees of mayor, removal for, 11
Claims for personal service not accord-
 ing to charter, 85
Forfeiture of office on, 223
Interference in departmental affairs as,
 22
Mayor's misconduct for failure to remove
 officer, 11
Penalty for, 223
Prohibited practices violation, as, 222
Punishment for, 223
Removal of officers for, 11
Supervisors' misconduct for failure to re-
 move appointees, 11
Suspension of officers for, 11
Splitting public work to evade making
 contracts, 95

OFFICIAL NEWSPAPER

Circulation required of, 13
Definition of, 13
Emergency ordinances published in, 13
Ordinances, publication in, 13

OILS STORAGE

Fire marshal enforcing laws as to, 37

OPERATING PERMIT

California street railroad company permit
 cancelled, 119.4 (c)

OPERATIONS

Examination as to department operations,
 21

OPTIONS

Retirement, see **Firemen's Retirement;**
 Retirement; Retirement System;
 Police Retirement

ORDINANCES

See also **Resolutions**
Absence from meetings penalized by, 19
Action of supervisors by, 13
Adding sections to and repealing, 17
Amendment of—
 generally, 13
 ordinance, by, 17
 proceeding de novo on, 15
 publication required, 15
Appropriation, see **Appropriation Ordi-**
 nances
Approval—
 city attorney, 26
 mayor, 14
"Ayes," voting by, 13
Bonds of officers and employees specified
 by, 8
Borrowing money authorized by, 81
Certificates as to correctness of codifica-
 tion, 17
Certification by clerk of board, 15
City attorney, duty to prepare or approve,
 26
City officers designated by, 4
Codification, generally, 17
Committee action prior to passage, 13
Continuance in force, 2
Contract procedures established by, 99
Department heads recommendations for,
 20
Disapproval by mayor, 14
Effective dates of, generally, 16
Emergency ordinances, see **Emergency Or-**
 dinances
Enacting clause of, 13

INDEX

ORDINANCES—Cont'd

Expenditure ordinances dependent upon balance and income, 86
Failure to return as approval by mayor, 14
Files kept by clerk of board of supervisors, 12
Fire department salaries fixed by, 36.2
Form approved by city attorney, 26
Franchise ordinances—
 effective dates of, 179
 passage generally, 13
Index as duty of clerk of board of supervisors, 12
Inspection of proposed ordinances, 13
Leases of park or recreation grounds, approval of, 42
Legislative act by, 13
Licenses and permits regulated by, 24
Limited tenure appointments authorized by, 145.1
Loose-leaf form, publication in, 17
Majority vote required for, 13
Mayor, transmittal to, 14
"Noes," voting by, 13
Notice of passage or finality, 15
Notice of, publication required, 13
Number of subjects, limitation on, 13
Objections of mayor in writing, 14
Officers of city designated by, 4
Official bonds provided by, 8
Passage of—
 generally, 13
 veto, passage after, 14
Planning department reporting on ordinances affecting public ways and buildings, 116.1
Police department salaries fixed by, 35.5.1
Policy declarations embodied by, 179
Power to make and enforce, 2
Preparation by city attorney, duty of, 26
Prior codification being valid, 17
Protest before effective date, 179
Publication—
 after passage, 15
 book form, 17
 clerk of board of supervisors, by, 12
 notice as to ordinance, 13
 passage for second reading, upon, 13
Public works—
 charter provisions enforced by ordinance, 98
 procedure governed by ordinance, 107
Readings required, 13
Re-codification of, 17
Reconsideration—
 after protest, 179
 after veto, 14
 request of mayor, 14

ORDINANCES—Cont'd

Recording by clerk of board, 15
Reduction of appropriations in, 14
Reference to committee required for, 13
Referendum after protest, 179
Repealing ordinance as amendment of, 13
Retirement system, for, 158
Sidewalk repair provided by where property owner fails, 108
Single subject, ordinances confined to, 17
Special election for initiative referendum or recall directed by, 182
Special meetings of boards and commissions provided by, 19 (g)
State law controlling in absence of, 3
Street accepted by, 108
Street railway—
 acquisition, 131
 regulation, 133
Subject expressed in title, 13
Sureties on official bonds provided by, 8
Time—
 action by mayor, 14
 mayor's absence as tolling, 14
 requirement for passage, 13
Title expressing subject of, 13
Transmittal to mayor, 14
Utility lease or sale ordinances subject to referendum, 123
Veto by mayor, 14
Voidance for failure to express subject in title, 13
Votes on, recording of, 13
Zoning action procedure established by, 117.1

ORGANIZED RESISTANCE

Chief of police having sheriff powers during, 35.7

OTHER CITIES

Fire department salaries fixed by surveys of, 36.2
Police department salaries fixed by surveys of, 35.5.1

OUTSIDE OF CITY

Application for residence, 7
Areas, power as to, 2
Civil service, positions excepted from, 142
Death or disability of police or firemen covered by retirement provisions, 162, 168.1.1, 171.1.1
Fire fighting men and apparatus sent to, 36
Harbor commission—
 agricultural members residing, 47
 employees residing, 48.1

OUTSIDE OF CITY—Cont'd

Highways, power as to, 2
Institutions, power as to, 2
Living outside because of health, 7
Plants, power as to, 2
Police service, see **Police Department**
Purchases for operation, 88
Residence of officers and employees, 7
Retirement provisions covering police and fire service, 162, 168.1.1, 171.1.1
Review of residence authorizations, 7
Salaries and wages, department heads fixing, 151
Termination of residence authorizations, 7
Utilities employees given time for residence, 125
Utilities—
 power as to, 2
 service, 130
Works, power as to, 2

OVERTIME

Compensation for police and fire retirement purposes excluding, 168.1.1, 171.1.1
Fire department compensation for, 36, 36.1 (c), 36.1 (e)
Municipal railway platform employees and operators, 151.3 (E)
Police department service, 35.5½ (d)

P

PACIFIC GAS AND ELECTRIC COMPANY

Retirement provisions for employees under leases with, 165.1

PALACE OF LEGION OF HONOR

Generally, see **California Palace of Legion of Honor**

PAMPHLETS

Initiative, referendum and recall arguments printed in, 183

PAPERS

City attorney's office, duty of keeping, 26
Investigation compelling production of, 21
Rules and regulations as to, 19 (a)

PARK COMMISSION

Recreation and park commission, see **Recreation and Park Commission**

PARK DEPARTMENT

Recreation and park department, see **Recreation and Park Commission**
Seniority of employees under consolidation, 41

PARKS

See also, **Squares**
Automobile parking station, leases for, 42
Buildings on, power to erect, 42
Building uses restricted to recreation, 42
Control management and direction exercised by park commission, 42
Leases of park land, 42
New parks, power to construct, 42
Taxation to support, 78

PARKING

Lease of parks and squares subsurface space for, 42

PART-TIME EMPLOYEES

Recording as such, 151
Retirement system applicable to, 165.2
Salaries and wages, fixing of, 151

PATROL SPECIAL POLICE OFFICERS

Appointment and removal of, 35.10
Beats or territories, ownership of, 35.10
Qualifications for position of, 35.10
Workmen's compensation, right to, 172

PAWN BROKERS

Inspection of, 24

PAYROLLS

Approval as requisite for payments, 150
Certification by commission secretary, 150
Class titles and numbers used on, 141
Controller, transmission to, 150
Examination of by commission secretary, 150
Part-time employees recorded on, 151
Team hiring included in, 150
Transmission to civil service commission, 150
Trucking services included in, 150
Verification of, 150
Warrants based on, 150

PEACE-TIME DRAFT

Retirement service credits affected by, 161

PEDDLERS

Inspection of, 24

PENALTIES

Books, refusal to produce, 21
Subpoenas, refusal to obey, 21

PENSION FUNDS

Deposit of, 82
Temporary transfers or loans as excluding, 81

INDEX

PER DIEM

Authorization by ordinance, 219

PERMITS

See **Licenses and Permits**

PERPETUAL SUCCESSION

City and county as having, 2

PERSONAL INJURY

Claims presented to controller, 87
Sidewalks and streets defects causing, liability for, 113

PERSONAL PROPERTY

City's power as to, 2
Police department care, restitution, disposal, 35.12
Power of city as to, 2
Sale by purchaser of supplies, 88
Title of gifts vested in city, 19 (d)

PERSONAL SERVICES

Payment for, 150

PERSONNEL DEPARTMENT

Civil service commission as, 141

PETTY CASH FUNDS

Revolving funds used as, 75

PHYSICAL REQUIREMENTS

Salvage corps members, 38.1

PHYSICIANS AND SURGEONS

Civil service, exception from, 142
Director of health, as, 61
Fire department, 36
Health advisory board membership of, 61
Health service medical care, 172.1 subd 3
(a) 2, 172.1 subd 5
Police department, appointment of, 35.4
Public health director as, 61

PIERS

Assigning use of, 48
Leases of, 48

PILOTS

Fire boats, see **Fireboats**

PLACES

Licenses and permits for use of, 24

PLANNING DEPARTMENT

See **City Planning Department**

PLANS AND SPECIFICATIONS

Approval by bureau of fire prevention, 38
Inspection of by bureau of fire prevention and public safety, 38
Modification, approval upon, 38
Report of bureau of fire prevention on, 38

PLATFORM EMPLOYEES

See **Municipal Railways**

PLAYGROUNDS

See also: **Recreation Centers; Recreation Fields**
Buildings on, power to erect, 42
Control management and direction by commission, 42
New playgrounds, power to construct, 42
Tax levies to support, 78

POLICE COMMISSION

Chief of police, appointment of, 35.1
Contingent fund for chief of police, allowance from, 35.8
Continuance of incumbents in office, 35
Department, commission as part of, 35
Discipline hearings by, 155
Duties of, generally, 35
Mayor as appointing, 35
Membership of, 35
Number of members, 35
Patrol special officers, appointment and removal of, 35.10
Powers of, generally, 35
Salaries of members, 35
Secretary for, 35.4
Successors in office, members as, 35
Term of office, 35
Traffic bureau under, see **Traffic Bureau**
Traffic regulations, see **Traffic Control and Regulation**

POLICE DEPARTMENT

Adjustment of salaries by ordinance, 35.5.1
Applicants, qualifications of, 145
Assignments, reporting for before duty, 35.5 1/2 (g)
Basic week of service, 35.5 1/2 (b)
Bureau of criminal information, salary of director, 35.5
Bureau of inspectors, see **Bureau of Inspectors**
Bureau of personnel—
 designation of director, 35.4
 salary of director, 35.5
Captain of traffic, designation of, 35.4
Chief of police—
 appointment of, 35.1

POLICE DEPARTMENT—Cont'd

Chief of Police—Cont'd

appointments by, 35.4
 auctioneers examined by, 24
 contingent fund for, 35.8
 department, chief as part of, 35
 deputy chief, designation of, 35.4
 fund for, 35.8
 inspections of business by, 24
 junk dealers examined by, 24
 municipal courts reports filed with, 54
 pawn brokers examined by, 24
 peddlers examined by, 24
 permit, power as to issuance and revocation, 35.6
 salary of, 35.5
 second-hand dealers examined by, 24
 sheriff powers during riots, 35.7
 special police officers, appointment and removal of, 35.9
 subpoenas served by officer designated by, 21
 term of office, 35.1
 Citizenship of members, 7
 Clean record, credit in examinations, 146
 Clerks of, generally, 35
 Commission, see **Police Commission**
 Components of, 35
 Continuance of positions in, 35.2
 Corporal's pay for retirement purposes, 166.1
 Criminologist as retirement member, 168.1.1
 Days off, 35.5 1/2, 35.5 1/2 (e)
 Death on duty, see **Death From Injury on Police or Fire Duty**
 Deputy chief, salary of, 35.5
 Disabilities—
 city payment to retirement system for, 172
 leaves for, 35.5 1/2 (f)
 medical treatment for, 172
 retirement board administering provisions as to, 172
 workmen's compensation benefits, 172
 Disciplinary procedure, 155
 Employees in, generally, 35
 Heroic conduct, reward for, 35.11
 Holidays for members of, 35.5 1/2 (h)
 Injury on duty, see **Death From Injury on Police or Fire Duty**
 Inspectors bureau, see **Bureau of Inspectors**
 Inspector of school traffic patrols appointed from, 35.3
 Jail matron as retirement member, 168.1.1
 Lieutenants, salary of, 35.5
 Management by police commission, 35
 Medical treatment for disability, 172

POLICE DEPARTMENT—Cont'd

Member—

 meaning of, 35.5 1/2 (a)
 retirement purposes, for, 168.1.1
 Meritorious service—
 credit in promotional exams, 146
 reward for, 35.11
 Military leaves affecting service in, 35.5
 Military service of eligibles affecting appointments, 153
 Motor boat operator as retirement member, 168.1.1
 Motorcycle duty, compensation for, 35.5
 Orders, reporting for before duty, 35.5 1/2 (g)
 Other cities, salaries fixed by surveys of, 35.5.1
 Outside of city—
 death in service, retirement system covering, 162
 disability in service covered by retirement system, 162
 retirement provisions applicable to service, 162, 168.1.1
 Overtime in, 35.5 1/2 (d)
 Patrol drivers, salary of, 35.5
 Personal property care, restitution, disposal, 35.12
 Photographer—
 retirement member, as, 168.1.1
 salary of, 35.5
 Physical requirements for applicants, 145
 Police officers or patrolmen—
 definition of, 35.5.1
 salaries fixed by ordinance, 35.5.1
 Police patrol driver—
 retirement member, as, 168.1.1
 salaries fixed by surveys, 35.5.1
 Police woman as retirement member, 168.1.1
 Premium pay differentials to members of, 35.5.1
 Probationary period of appointment in, 148
 Promotions—
 clean record considered, 146
 examinations for, 146
 meritorious service considered, 146
 ranks from which made, 146
 seniority of service considered, 146
 Property care, restitution, disposal, 35.12
 Property clerk, assignment of, 35.4
 "Rates of compensation," definition of, 35.5.1
 Residence of members required, 7
 Retirement, see **Police Retirement**
 Return to civil service rank after special assignment, 35.4

INDEX

POLICE DEPARTMENT—Cont'd

- Roll call prior to duty, reporting for, 35.5 ½ (g)
- Salaries and wages—
 - generally, 35.5, 35.5 ½, 35.5.1
 - basis of, 35.5 ½ (b)
 - officers in, 35.5
 - workmen's compensation in lieu of, 172
- Salary standardization, exception from, 151.1
- School traffic patrol inspector appointed from, 35.3
- Secretary—
 - designation of, 35.4
 - salary of, 35.5
- Seniority of service, allowance in promotional examinations, 146
- Sergeants, salary of, 35.5
- Service computation for compensation purposes, 35.5
- Sick leave, generally, 35.5 ½ (f)
- Special police officers, appointment and removal, 35.9
- Supervising captain of district—
 - designation of, 35.4
 - salary of, 35.5
- Surgeon, salary of, 35.5
- Surveys, fixing salaries and wages in accordance with, 35.5.1
- Transfers upon disability, 156
- Vacation, service during, 35.5 ½ (e)
- Woman protective officer—
 - retirement member, as, 168.1.1
 - salary of, 35.5, 35.5.1
- Working benefits, payments to members, 35.5.1
- Workmen's compensation, entitlement to, 172
- Years of service for compensation purposes, 35.5

POLICE OFFICERS

- Absence from state under orders of chief, 6
- Department, part of, 35
- Number of officers in force, 35.5
- Salvaging of property aided by, 37

POLICE PROTECTION

- Telephone system service for, 61

POLICE RETIREMENT

- Actuarial equivalent—
 - election as to receiving, 166 (a)
 - retirement, with death benefits, 168.1.2
- Added sections, effective date of, 168.1.16
- Adjustment of salaries affecting, 35.5.1
- Adjustments for persons retired or dead prior to January 1, 1951, 168.1.5.1

POLICE RETIREMENT—Cont'd

- Age—
 - contributions based on, 168.1.10 (1)
 - entrance into department, determination of, 168.1.10 (1)
- Age and service for—
 - generally, 166 (a), 168, 168.1.2
 - aggregate total service, 168.1.2
 - compulsory retirement at seventy, 168
 - continuous service necessary, 168
- 55 years age—
 - death allowance upon, 168.1.5
 - optional retirement, 168.1.2
- 25 years service—
 - natural death upon, 168.1.5, 168.1.5.1
 - retirement upon, 168.1.2
- 60 years age, service prior to, 168.1.2
- 62 years age—
 - less than, retirement upon, 168
 - 25 years of service, retirement upon, 168
 - 30 years service, retirement on option, 166 (a)
- 65 years age—
 - retirement upon, 168.1.2
 - service under 25 years, 168.1.2
- 66 years age, retirement upon, 168.1.2
- 67 years age, retirement upon, 168.1.2
- 70 years of age, compulsory retirement upon, 168
- 10 years service, incapacity retirement upon, 168.1.3
- 25 years service—
 - actuarial value, allowance computed on, 168.1.2
 - death allowance upon, 168.1.5
 - optional retirement, 168.1.2
 - retired regardless of age, 168.1.2
 - service under, when 65 years of age, 168.1.2
- 55 years age—
 - natural death upon, 168.1.5, 168.1.5.1
 - retirement upon, 168.1.2
- 30 years service—
 - death allowance for, 168.1.5
 - natural death, allowance upon, 168.1.5, 168.1.5.1
 - optional retirement, 168.1.2
 - retirement upon, 168, 168.1.2
 - 62 years age, optional retirement, 166 (a)
- Allowances and benefits—
 - actuarial equivalent—
 - death benefits, with, 168.1.2
 - election as to receiving, 166 (a)
 - adjustment, persons retired or dead prior to January 1, 1951, 168.1.5.1

POLICE RETIREMENT—Cont'd

Allowances and benefits—Cont'd

amount of, 166 (a), 168.1.2
beneficiaries designated as receiving, 168.1.7

children's, see *infra*, Children's Allowances

continuance—

after January 8, 1932, 167

after natural death, 168.1.5, 168.1.5.1

death, see *infra*, Death Benefits

definition of, 168.1.1

disability affecting, see *infra*, Disability

election as to membership, after, 166 (h)

estate as receiving, 168.1.7

gainful employment, reduction, 168.1.12

illness from duty, effect of, 168.1.3

increase for person retired or dead prior to January 1, 1951, 168.1.5.1

limitation to charter provisions for, 166 (g)

monthly payments, as, 168.1.1

natural death, on, 168.1.5, 168.1.5.1

parents, see *infra*, Parents' Allowances
part during life and part after death, 166 (a)

prior service, for, 166 (h)

percentage for prior service, 166 (g)

reduction because of—

gainful employment, 168.1.12

workmen's compensation, 166 (g)

termination of employment, refund upon, 168.1.8

widows, see *infra*, Widows' Allowances

workmen's compensation as reducing, 166 (g), 168.1.6

Amendments, effective date, 168.1.14

Amount of allowance, 168.1.2

Beneficiaries—

designated, allowance to, 168.1.7

receiving contributions, 168.1.10 (3)

Bodily injury, retirement for, 168.1.3

Charter—

generally, see **Charter**

definition of, 168.1.1

Children's allowances—

continuance after January 8, 1932, 167

death allowance, 168.1.4, 168.3

effective as of November 2, 1948, 168.1.5.1

election as to, 168.1.5

natural death of member, 168.1.5, 168.1.5.1

no widow, pension in case of, 166 (c)

option as to, 168.1.5

widow's death, taking pension upon, 166 (c)

City's contributions for, 168.1.10 (6)

POLICE RETIREMENT—Cont'd

Compensation—

city contributions based on, 168.1.10 (6)

definition of, 168.1.1

overtime excluded from, 168.1.1

workmen's compensation distinguished from, 168.1.1

Compensation earnable—

definition of, 168.1.1

"Rates of Compensation" for motorcycle policemen as meaning, 35.5.1

Compulsory retirement at seventy, 168

Conflicting provisions superseded, 168.1.13, 168.1.13

Continuance of benefits—

after January 8, 1932, 167

after natural death, 168.1.5, 168.1.5.1

Continuing credit of contributions prior to July 1, 1945, 168.1.10 (4)

Continuous service, necessity, 168

Contributions—

accounts credited with, 168.1.10 (3)

additional contributions by city, 166 (f)

adjustment of account on transfers, 168.1.8

age as basis of, 168.1.10 (1)

amount of, 166 (d)

beneficiary, payment to, 168.1.10 (3)

city's—

generally, 168.1.10 (6)

application of, 168.1.10 (5)

disabled member, 172

increased allowances, 168.1.5.1

installment payment, of, 168.1.10 (6)

members contribution to other pension funds, 166 (d)

members on January 8, 1932, 166 (f)

deductions for, 168.1.10 (3)

deficit in, city's additional contributions, 166 (f)

dependent contribution, 168.1.10 (2)

disability payments deducted for, 172

election as to membership after, 166 (h)

end of employment, refund upon, 168.1.8

estate, payment to, 168.1.10 (3)

increases for members retired or dead prior to January 1, 1951, contributions for, 168.1.5.1

July 1, 1945, continuing credit of, 168.1.10 (4)

limitation upon, 168.1.10 (1), 168.1.10 (2), 166 (g)

member's contributions, 166 (d)

normal rate as one third of allowance, 168.1.10 (1)

other assets, in fund with for joint participation, 168.1.10 (7)

INDEX

POLICE RETIREMENT—Cont'd

Contributions—Cont'd

- prior contributions for prior service, pension from, 166 (g)
- rate of, determination of, 168.1.10 (1)
- redeposit of refund, 168.1.8, 168.1.9 (3)
- refund—
 - dependent contribution, 168.1.10 (2)
 - end of employment or transfer, 166 (d), 168.1.8
 - separation from city service, 166 (d)
 - salary deduction for, 168.1.10 (3)
 - total, with interest applied to allowances, 168.1.10 (3)
- transfers, adjustment of accounts upon, 168.1.8

Corporal pay for, 166.1

Criminologist as member for, 168.1.1

Death—

- before retirement, estate or beneficiaries receiving allowance, 168.1.7
- natural death, allowances upon, 168.1.5, 168.1.5.1
- on duty, see **Death From Injury on Police or Fire Duty**

Death benefits—

- benefits as including, 168.1.1
- definition of, 168.1.1
- election as to, 168.1.2
- estate or beneficiaries receiving, 168.1.7
- monthly payments, as, 168.1.1
- natural causes, 166 (e)
- part retirement and part death benefits, 168.1.2
- retirement with, 168.1.2

Deductions from salary for, 168.1.10 (3)

Dependent contributions for, 168.1.10 (2)

Disability—

- actuarial equivalent, retirement upon with death benefits, 168.1.2
- allowance on retirement for, 168.1.3
- board considering retirement for, 168.1.3
- calculations for persons retired or dead prior to January 1, 1951, 168.1.5.1
- credits for service in other departments, 168.1.9 (3)
- end of, allowance ceasing upon, 168.1.3
- natural death after retirement for, allowances upon, 168.1.5, 168.1.5.1
- recommendation as to retirement upon, 168.1.3
- recovery from, end of pension upon, 166 (b)
- retirement for, 166 (b), 168.1.3
- return to service at end of, 166 (b), 168.1.3

Effective date—

- amendment provisions for, 168.1.14
- new sections, 168.1.16

POLICE RETIREMENT—Cont'd

Election—

- children, parents, widows allowances, 168.1.5
- membership, 166 (h)
- part during life and part to beneficiaries, 166 (a)

Employment after, effect of, 168.1.12

Estate—

- allowance payable to, 168.1.7
- contributions received by, 168.1.10 (3)
- Final compensation, definition of, 168.1.1
- Future members, retirement of, 168
- Gainful employment after, effect of, 168.1.12

Illness on duty, retirement for, 168.1.3

Incapacitation, requirement for, 168.1.3

Increase for members retired or dead prior to January 1, 1951—

- apportionment of, 168.1.5.1
- contributions for, 168.1.5.1

Injuries, retirement for, 168.1.3

Installment payment of city's contributions to, 168.1.10 (6)

Interest, definition of, 168.1.1

Jail matron—

- membership, 168.1.1
- service, credit for, 168.1.9 (2)

Joint participation contributions held with other assets for, 168.1.10 (7)

July 1, 1945, membership on or after, 168.1

July 1, 1949, option as to membership after, 168.1

Marriage as necessary for widows allowances, 168.1.5

Member of police department, definition of, 162, 168.1.1

Membership—

- after January 8, 1932, 168
- definition of, 162
- July 1, 1945, and after, provisions affecting, 168.1
- July 1, 1949, 166 members having option, 168.1

Military service, credit for, 168.1.9 (4)

Motor boat operator as member, 168.1.1

Natural death of member, allowances upon, 168.1.5, 168.1.5.1

Options—

- children, widows, parents allowances, 168.1.5
- July 1, 1949, membership after, 168.1
- membership—
 - choice for members on January 8, 1932, 166 (h)
 - section 166, or section 168, 166 (h)
- retirement, 168.1.2

POLICE RETIREMENT—Cont'd

Option time and service, 166 (a)
Other departments, credits for service in, 168.1.9 (3)
Outside of city—
 death or disability, retirement provision covering, 168.1.1
 retirement provisions applied to service, 162
Parents allowances—
 continuance after January 8, 1932, 167
 death or injury of member on duty, 166 (c)
 death allowance, 168.1.4, 168.3
 effective as of November 2, 1948, 168.1.5.1
 election as to, 168.1.5
 natural death of member, 168.1.5, 168.1.5.1
 option as to, 168.1.5
Patrol driver as member, 158.1.1
Pension, see *supra*, Allowances and Benefits
Photographer as member for, 168.1.1
Police woman as member for, 168.1.1
Prior service, pension for, 166 (h)
Ratios as to allowance, 168.1.2
Reductions on account of workmen's compensation, 166 (g)
Refund of contributions—
 dependent, 168.1.10 (2)
 end of employment or transfer, 166 (d), 168.1.8
Retired person, see **Retired Persons**
Retirement allowance, see *supra*, Allowances and Benefits
Retirement board—
 generally, see **Retirement Board**
 definition of, 168.1.1
Retirement system, definition of, 168.1.1
Right of retirement, 168.1.11
Salaries and wages—
 corporal pay for retirement purposes, 166.1
 deduction, 168.1.10 (3)
Saving clause for provisions, 168.1.15, 168.1.17
Service and time credits—
 disability in line of duty, time credited, 172
 fire and police departments, service in, 168.1.9 (1)
 jail matron, service as, 168.1.9 (2)
 military service, for, 168.1.9 (4)
 other departments, service in, 168.1.9 (3)
 re-deposit of contributions to obtain, 168.1.9 (3)
 sheriff office service, 168.1.9 (2)

POLICE RETIREMENT—Cont'd

System, definition of, 168.1.1
Unconstitutionality, saving clause for, 168.1.15, 168.1.17
Widows allowance—
 child taking on widow's death, 166 (b)
 continuance after January 8, 1932, 167
 contributions for, 168.1.10 (2)
 effective as of November 2, 1948, 168.1.5.1
 election as to, 168.1.5
 marriage on injury date required, 168.1.4, 168.1.5, 168.3
 natural death of member, 168.1.5, 168.1.5.1
 option as to, 168.1.5
 re-marriage, payment until, 168.1.4, 168.3, 168.1.5
 time of marriage required for, 168.1.5
Woman protective officer as member for, 168.1.1
Workmen's compensation benefits as reducing allowances, 166 (g), 168.1.6

POLICE SURGEON

Appointment of, 35.4
Salary of, 35.5

POLICING CONDITIONS

Licenses and permits for business affecting, 24

POLICY DECLARATIONS

Ordinances effectuating, 179

POLITICAL ACTIVITIES

Suspension or dismissal resulting from, 154

POLITICAL CODE

Boundaries of city set by, 1

POPULATION

Master plan including estimates of, 116

POSITIONS

Change in duties, notice to civil service commission of, 143
Creating of, 143
Emergency positions for unemployment relief, 149
Need for as indicated by civil service commission, 143
Notice to civil service commission as to creation or abolition of, 143

POSTING

Orders of department heads, 19 (a)
Rules and regulations of boards and commissions, 19 (a)

INDEX

POWERS

Administrative code specifying, 23
Board of education, generally, 49
Board of supervisors, generally, 9
Boards, generally, 19
City attorney, powers of, 26
City planning commission, generally, 49
City, powers of, generally, 2
Civil service commission, generally, 49
Commissions, generally, 19
Continuance of, 2, 23
County officers, generally, 18
Department heads, generally, 20
Enumeration in charter as not exclusive, 2
Exercise as provided by charter, 9
Fire commission, generally, 36
Harbor commission powers, 47, 48
Harbor master's powers, generally, 48
Public utilities commission, 49, 120
Retirement board, 49, 159
Specification in charter not exclusive, 2

PREMIUM PAY DIFFERENTIAL

Police department members as entitled to, 35.5.1

PREMIUMS

Official bond, city as paying, 19 (i)

PRESIDENTS

Boards appointing, 19 (b)
Board of supervisors—
 appointing, 19 (b)
 election of, 10
Commissions appointing, 19 (b)
Term of office—
 board of supervisors, 10
 boards, generally, 19 (b)

PRINTING

Municipal court annual reports, printing of, 54
Report of audit of controller's books, 68

PRIVATE OWNERSHIP

Reversion of park and recreation lands to as avoided, 41.1

PRIVATE PROPERTY

Art commission advice as to beautification, 46
Safety measures as to, ordered by director of public works, 112

PRIVILEGES

Licenses and permits for operation of, 24

PROBATION

Civil service, see **Civil Service Appointments**
Officers—
 adult, see **Adult Probation**
 juvenile, see **Juvenile Court Probation officer**

PROCESS

Mayor, service upon, 25

PROHIBITED PRACTICES

Employment in firms by board or commission members, 222
Franchises, interest in, 222
Gifts from subordinates, 222
Interest in contracts etc., 222

PROMOTIONS

Ascertained merits considered in, 146
Examinations for, see **Civil Service Examinations**
Fire department, see **Fire Department**
Interference with as prohibited, 22
Leaves of absence for, 153
Police, see **Police Department**
Ranks from which made, announcement of, 146
Records of service considered in, 146
Secret information for purpose of as prohibited, 147
Service record considered in, 146
Tests, see **Civil Service Examinations**

PROPERTY

Continuance of rights and titles, 2
Department, director in charge, 91
Director, see **Director of Property**
Harbor property vested in harbor commission, 47
Loss or damage due to negligence, reports on, 88
Ordinance providing for custody of, 83
Police department care, restitution, disposal, 35.12
Rules and regulations as to, 19 (a)
Surplus as transferred to other departments, 88

PROPERTY CLERK

Police department property clerk, 35

PROPOSED BUDGET

Generally, see **Budget**

PROTECTION OF PROPERTY

Salvage corps duties as to, 38.1

PUBLIC ADMINISTRATOR

Attorneys, appointment and removal, 61
Bond of, 8
City officer, status as, 4
Finance and records department, inclusion in, 61
Officer of city, status as, 4

PUBLICATION

Administrative code, 23
Advertising for bids, 95
Appropriation ordinance draft as published, 72
Awards of contracts, 89
Bids advertising of, 95, 224
Budget message of mayor, 72
Certificate as to correctness of ordinance codification, 17
Charter, publication of, 17
Civil service exams announcement, 144
Details of proposed budget, 72
Digest of decisions in published charter, 17
Emergency measures, 15
Initiative ordinances in published charter, 17
Loose-leaf for ordinances, 17
Master plan, publishing of, 116
Meaning of, 224
Notice—
 ordinances, 13
 passage of finality of measures, 15
Official newspaper, in, 224
Orders of department heads, 19 (a)
Ordinances—
 generally, 15
 clerk of board of supervisors responsible for, 12
 book form, 17
 passage for second reading, publication upon, 13
Prior certification of publication of ordinances being valid, 17
Property sales, time and place for, 92
Proposed budget as published, 72
Readvertising for bids, 95
Rejection rights in advertisement for bids, 95
Resolutions—
 generally, 15
 clerk of board of supervisors responsible for, 12
Rules and regulations of boards and commissions, 19 (a)
Schedule of compensations, proposal of, 151

PUBLIC DEFENDER

Generally, 33
Advice to impecunious persons, duty to give, 33
Appointment in office of, 33
Assistant, 33, 34, 34.1
Civil service applicable to employees of, 34.1
Defense of impecunious persons, duty of, 33
Duty to defend and advise, 33
Elective officer, as, 5, 33
General election, election at, 5
Military leave affecting employees of, 34.1
Official bond of, 33
Practice of law qualification, 33
Qualifications of, generally, 33
Salary of, 33, 151.1
Term of, 5

PUBLIC EMERGENCY

See **Emergencies**

PUBLIC HEALTH DEPARTMENT

Advisory board, see **Health Advisory Board**
Director, see **Director of Health**
Functions included in, 61
Health advisory board, see **Health Advisory Board**
Personnel included in, 61
Physicians or surgeons, director as, 61
Reports by health advisory board, 61

PUBLIC IMPROVEMENTS

See **Public Works and Improvements**

PUBLIC INTEREST AND NECESSITY

California railroad company acquisition, existence in, 119.4
Market street railway acquisition, existence in, 119.1 par 2

PUBLICITY EXPENDITURES

Budgeting and control of by chief administrative officer, 60

PUBLIC LANDS

Abandonment of when not needed for park purposes, 41.1

PUBLIC NUISANCES

Dangerous building subject to abatement as, 38

PUBLIC OFFICE

Candidacy for as forfeiture of appointment or position, 5
Welfare commission members as excluded from, 61.1 subd 2

PUBLIC SAFETY

Bureau, see **Bureau of Fire Prevention and Public Safety**

PUBLIC SCHOOLS

Generally, see **Schools**

Board of education controlling, 134

PUBLIC TUMULT

Chief of police having sheriff powers during, 35.7

PUBLIC UTILITIES

Accident reserve fund, appropriations for, 127

Acquisition by city—
policy of, 119

valuation work performed utilities commission, 121

Appraisals to determine depreciation, 128

Board of supervisors—

having power to lease or sell, 123

procuring reports from utilities commission on acquisitions, 119

Bond—

election on petition of electors, 105

exception from tax levy authority, 78

interest payable by bond sale, 102

validity not affected by error in proceedings, 105

Budget estimates for—

generally, 69

exceeding revenues, approval of, 74

increases by supervisors prohibited, 72

Budget of expenditures in excess of estimated revenues, limitation of approval of, 74

Capital expenditures financed by bonds, restrictions as to, 74

Citizenship required for continuance in, 125

Civil service—

employees deemed appointed under, 125.1

incumbents deemed appointed under, 125

Claims adjusted by commission, 130

Collection for services, 130

Commission, see **Public Utilities Commission**

Compensation reserve fund, appropriation for, 127

Constructions or repairs over \$2000 requiring contracts, 95

Continuance of employees in, 125, 125.1

Deficiency, tax levy to meet, 130

Depreciation determined by appraisals, 128

PUBLIC UTILITIES—Cont'd

Electors petitioning for acquisition, report from commission thereon, 119

Expenditures in excess of estimated revenues, limitation on approval of budget for, 74

Expenses apportioned among, 122

Extensions, appropriation for, 127

Fares, see **infra, Rates and Fares**

Foreign trade zones, as, 121

Franchises, see **Franchises**

Functions, continuance of, 2

Funds, appropriation from, 127

Gradual acquisition as policy, 119

Harbor utilities vested in harbor commission, 47

Improvements, appropriations for, 127

Insurance reserve fund, appropriations for, 127

Interest funds, appropriations for, 127

Interest on bonds payable by bond issue, 102

Leased utilities, employees established under, 125.1

Leases by board of supervisors, 123

Maintenance, appropriations for, 127

Manager, see **Manager of Utilities**

Net income computation, depreciation determined for, 128

Operating expenses appropriation for, 127

Ordinances granting privileges, effective date of, 16

Outside of city, service for, 130

Ownership by city, policy of, 119

Pension charges, appropriation for, 127

Petitioning bond election for, 105

Public interest or necessity demanding acquisition construction or completion, 119

Rates and fares—

board of supervisors, submission of changes to, 130

changes, hearings on, 130

classes of service, varying scales for, 130

commission fixing, 130

deficiency, tax levy to meet, 130

hearings as to, 130

income sufficient for expenses, 130

notice of intention to revise, 130

outside of city, rates for, 130

revenue sufficient for expenses, 130

Receipts deposited in treasury, 127

Reconstruction—

appropriation for, 127

fund for, 128.1

Repairs, appropriations for, 127

Replacement, appropriations for, 127

Residence in city as required, 125, 125.1

PUBLIC UTILITIES—Cont'd

Revolving funds for, 75
 Sales by board of supervisors, 123
 Sinking funds, appropriations for, 127
 Surpluses, transfer to general fund, 129
 Surplus fund, appropriation for, 127
 United States citizenship required for continuance in, 125
 Valuation in acquisition as performed by public utilities commission, 121

PUBLIC UTILITIES COMMISSION

Abandonment of lines requiring recommendation of, 132.1
 Accounts as kept separately by, 64
 Acquisitions, valuation work in, 121
 Airport—
 department under commission, 122
 jurisdiction over, 121, 125
 leasing of properties, 93
 Attorneys for, 126
 Budget estimates—
 exceeding utilities revenues, approval of, 74
 filed and acted upon, 69
 hearing on, 69
 Chief executive, utilities manager as, 124
 City attorney as attorney for, 126
 Claims adjusted by, 130
 Collections for services, power as to, 130
 Compensation of members, 120
 Contracts for heat, light and power, 121
 Cost analysis obtained by, 121
 Creation of, 120
 Demand for payment from extension fund as duty of, 119.1 par 4
 Discontinuance of service, power as to, 130
 Duties of, generally, 120
 Exchange of transportation transfer privileges arranged by, 121
 Expenses apportioned among utilities, 122
 Extension fund payment demand as duty of, 119.1 par 4
 Fares, power as to, 130
 Fees as paid by, 121
 Hearings, budget estimates as subject of, 69
 Heat, light and power contracts by, 121
 Hetch-Hetchie project as department under, 122
 Inspection rules, subject to, 121
 Joint use of facilities arranged by, 121
 Leasing of water department property for agricultural purposes, 93
 Legal advisor of, city attorney as, 126
 Manager, see **Manager of Utilities**

PUBLIC UTIL. COMM.—Cont'd

Market street railway—
 contract, duty as to, 119.1 par 5
 operation prior to payment for, 119.1 par 3
 Mayor appointing members of, 49, 120
 Municipal railway as department under, 122
 Number of members, 120
 Ordinances and regulations of public works department observed by, 121
 Ordinances as to street railway regulation proposed by, 133
 Policies determined by, 121
 Powers of, generally, 120
 Public works department excluding functions of, 61
 Rates, power as to, 130
 Recall, members subject to, 120, 179
 Recommendation of manager prior to action, 121
 Regulation of street railway by, 133
 Removal, members subject to, 120, 179
 Revenue estimates obtained by, 121
 State railroad commission, accounts conforming to requirements of, 64
 Surpluses, deposit to credit of general fund, 129
 Suspension, members subject to, 120
 Terms of office, 49, 120
 Transfer privileges exchanges arranged by, 121
 Valuation work in acquisition proceedings, 121
 Water department as department under, 122

PUBLIC WAYS

Art commission advise as to, 46

PUBLIC WELFARE DEPARTMENT

Assistants for, generally, 61.1 subd 1
 Board of supervisors, duties as authorized by, 61.1 subd 8
 Bureaus established by director of, 61.1 subd 6
 California, duties as authorized by, 61.1 subd 8
 Citizens' emergency relief committee functions—
 exercised by, 61.1 subd 8
 transferred to, 61.1 subd 7
 Civil service applying to employees of, 61.1 subd 7
 County welfare department transferred to, 61.1 subd 7, 61.1 subd 8
 Director, see **Director of Public Welfare**
 Divisions as established by director of, 61.1 subd 6

INDEX

PUBLIC WELFARE DEPT.—Cont'd

Employees for, 61.1 subd 1, 61.1 subd 7
 Establishment of, 61.1 subd 1
 Mayor appointing members of 61.1 subd 3
 San Francisco, duties as authorized by, 61.1 subd 8
 Transfer of county welfare department to, 61.1 subd 7
 United States, duties as authorized by, 61.1 subd 8
 Welfare commission, see **Welfare Commission**

PUBLIC WORKS AND IMPROVEMENTS

Accounting for cost of, 95
 Acts of God delaying performance of contracts for, 97
 Acquisitions for future projects, recommendations as to, 69.1
 Additional projects recommendations, 69.1
 Advertising and awards as to contracts as established by ordinance, 99
 Assessment of cost against private property benefited thereby, 103
 Bids for projects under \$2000, 95
 Board of supervisors enforcing charter provisions as to, 98
 Bonds on contracts—
 ordinance providing for, 99
 performance within time limit, covering, 97
 Budget estimate increases by mayor, 69
 Charter as governing procedure for, 107
 Citizenship required of workers under, 98
 City department as bidding on contracts for, 95
 City planning department—
 action requisite to appropriation for, 69.1
 schedule of projects filed with, 69.1
 Collusion as to contracts for, penalties, 100
 Completion under new charter, 2
 Concurrence of planning department implied, 69.1
 Conformance with master plans, 69.1
 Contracts—
 bonds on, 97, 99
 procedure established by ordinance, 99
 wages under as equal to private employment, 98
 Cost per unit, contracts for, 97
 Department of city planning functions as to, 116
 Department of, see **Public Works Department**
 Director, see **Director of Public Works**

PUB. WKS. AND IMPROV.—Cont'd

Eight hour day for work under contract for, 98
 Emergency as justifying expeditious manners, 95
 Estimates as required for approval of, 95
 Expenses paid from revolving funds, 103
 Extension of time for completion of contract, 97
 Gross price contracts as authorized, 97
 Hours of work under contract for, 98
 "Improvement," definition of, 98
 Indebtedness incurred by voters for improvements, authorization for, 103
 Joint approval of contracts for, 95
 Liquidated damages provision in contracts for, 97
 Master plans, conformance of proposed projects with, 69.1
 Modification of projects to conform to master plans, 69.1
 Orders, projects under \$2000 performed under, 95
 Ordinances—
 charter provisions enforced by, 98
 procedure governed by, 107
 Preferences to locally manufactured goods in contracts for, 98
 Preferential treatments as to contracts for, penalties for, 100
 Price preference for locally manufactured goods in contracts for, 98
 Progressive payment for—
 authorized on contracts, 96
 revolving fund for, 103
 Projects—
 not previously submitted, supplemental appropriations for, 69.1
 over \$2000 requiring contracts, 95
 "Public work," definition of, 98
 Real property sale proceeds appropriated to, 92
 Recommendations as to programs for, 69.1
 Residence required of workers under contracts for, 98
 Revolving fund—
 generally, 103
 appropriations for, 110
 board of supervisors establishing, 110
 credit of city used for, 110
 interest on use as added to contracts, 110
 reimbursement by special assessments, 110
 special assessment projects financed by, 110
 Schedules of projects files with city planning commission, 69.1

PUB. WKS. AND IMPROV.—Cont'd

Special assessment projects, 110
 State law governing procedures for, 107
 Streets as improved after paving, 108
 Sub-contracts for public works, 98
 Supplemental appropriations for projects
 not previously submitted, 69.1
 Surplus transferred to, 77
 Time limits as fixed in contract, 97
 Working hours under contract for, 98

PUBLIC WORKS DEPARTMENT

Administration by director of public
 works, 61
 Delinquent assessment, notifying tax col-
 lector of, 107
 Director of, see **Director of Public Works**
 Functions included in, 61
 Management by director, 106
 Personnel included in, 61
 Telephone exchange as included in, 61
 Utilities commission as excluded from, 61

PURCHASE ORDERS

Accounts of revenue and expenses showing
 amounts of, 76
 Allotments to departments as affecting
 controller's certification of, 72
 Average use record as basis for, 89
 Chief administrative officer approving
 \$2000 purchase orders, 88
 Funds pre-requisite, 88
 Purchaser's record of average use as basis
 for, 89
 Purchases as made by, 88
 Requisitions as basis for, 89
 Unencumbered balances as pre-requisite
 for, 88

PURCHASER OF SUPPLIES

Administration of purchasing department
 by, 61
 Average use record as basis for purchases,
 89
 Bids rejected by, 95
 Bills as approved by, 89
 Cash purchasing when advantageous, 90
 Central garages in charge of, 88
 Central store rooms in charge of, 88
 Certifications of material standards as set
 by, 88
 Chief administrative officer as appointing,
 61
 Contracts for purchases approved by, 95
 Contractual services, contact made by, 88
 Department head purchases as approved
 by, 88
 Discounts on bills, taking advantage of, 90
 Exchanges of used materials by, 88

PURCHASER OF SUPPLIES—Cont'd

Government surplus property purchases,
 88.1
 Inspection of purchases by, 88
 Inventory of material supplies and equip-
 ment maintained by, 88
 Joint approvals with chief administrative
 officer, 95
 Loss or damage of property as reported
 by, 88
 Obsolete equipment as sold by, 88
 Outside city, approval of purchaser for, 88
 Periodic check of property by, 88
 Purchases, see **Purchases**
 Regulations for purchases as made by, 88
 Rejection of articles below standards, 88
 Revolving fund—
 cash purchases, use for, 90
 discounts, use for, 90
 payment of bills from, 90
 transfers of appropriations to, 90
 warrants drawn from for payments, 90
 Standardization of materials by, 88
 Tests of material standards set by, 88
 Used materials as sold by, 88
 Vouchers as approved by, 89
 Warehouses in charge of, 88

PURCHASES

Approval of bills before drawing warrants,
 89
 Approvals by purchaser of supplies, 88
 Bids, see **Bids**
 Bills for, duty as to, 20
 Checking of, duty as to, 20
 City department as bidding on contracts
 for, 95
 Claims for, duty as to, 20
 Construction operation purchases, 88
 Contract—
 \$1000 purchases, 88
 \$2000 purchases, 95
 Department heads making, 88
 Emergency purchases on informal bids, 88
 Inspection by department as ordered by
 purchaser of supplies, 88
 Joint approval of contracts for, 95
 Open market purchases, 88
 Outside city operations, purchases for, 88
 Procedure for, 89
 Progressive payments as authorized, 96
 Purchase orders for, 88
 Purchaser of supplies as making, 88
 Regulations made by purchaser of sup-
 plies, 88
 Rejection of articles below standards, 88

INDEX

PURCHASES—Cont'd

- Requisitions—
 - department heads issuing or authorizing, 20
 - interference with prohibited, 22
 - power as to, 20
 - purchase orders and contracts as based on, 89
- Specifications—
 - department as furnishing, 88
 - purchaser of supplies setting, 88
- Standard brand, purchase of, 88

PURCHASING DEPARTMENT

- Bureau of supplies included in, 61
- Central garages operated by, 61
- Central stores operation by, 61
- Purchaser of supplies as administrator of, 61
- Shop operated by, 61
- Warehouses operation by, 61

Q

QUALIFICATIONS FOR OFFICE

- Generally, 7
- City attorney, generally, 26
- District attorney, generally, 29
- Harbor master, generally, 48
- Public defender, office of, 33
- Vacancy resulting from negligence as to, 6
- Warrant and bond deputy, 30

QUORUM

- Board majority as being, 19

R

RAILROADS

- Fees as regulated by harbor commission, 48
- Harbor railroads regulated by commission, 48
- Street repair as duty under franchises, 108

RATES

- Harbor commission as regulating and collecting, 48
- Public utilities, see **Public Utilities**

READINGS

- Appropriation ordinance amended readvertised prior to, 72

REAL ESTATE DEPARTMENT

- Civic auditorium managed by, 61
- Exposition auditorium managed by, 61
- Right-of-way agent as included in, 61

REAL PROPERTY

- Acquisitions, director appraisal for, 91
 - Additional land purchased from proceeds of sale, 92
 - Cable cars, sale of parcel for, 119.3
 - City attorney's duty to examine and approve title to, 26
 - City's power as to, 2
 - Condemnation, appraisal for, 91
 - Department, director in charge, 91
 - Director, see **Director of Property**
 - Emergency measures affecting lease or purchase, prohibition of, 16
 - Exchanges of, 92
 - Harbor commission legal proceedings as to, 48
 - Idle property, director's recommendations as to, 94
 - Maps of as kept by director, 94
 - Power of city as to, 2
 - Proceeds of sale, disposition of, 92
 - Purchase price shown in record of, 94
 - Records kept by director, 94
 - Report annually as to estimated value of, 94
 - Sale—
 - ordinance authorizing, 92
 - recommendations of boards, officers, commissions, 92
 - when not needed for recreation or park purposes, 41.1
 - Tenders received in sale of, 92
 - Time and place of sale as advertised, 92
 - Title—
 - examined and approved by city attorney, 26
 - gifts vested in city, 19 (d)
 - Trading of, 92
 - Unused property, director's recommendations as to, 94
- ### **REASSIGNMENT**
- Fire boat personnel due to curtailment or conversion of fire boats, 38.3
- ### **RECALL**
- See **Initiative Referendum and Recall**
- ### **RECEIPTS**
- Daily statements of, 82
 - Revenues, see **Revenues**
- ### **RECOMMENDATIONS**
- Department heads' duty to make, 20

RECORDER

- City officer, status as, 4
- Finance and records department, inclusion in, 61
- Officer of city, status as, 4
- Registrar of voters, functioning as, 60

RECORDS

- Bids for open market purchases, 88
- Examination of, power as to, 21
- Master plan amendment action, record of, 116
- Meetings of boards and commissions, 19
- Moneys and properties in joint custody safe, 83
- Municipal court records, responsibility for, 53
- Rules and regulations as to, 19 (a)
- Service record of employees, 152
- Suspension reports deleted from, 154

RECREATION AND PARK COMMISSION

- Appointments by mayor, 40
- Buildings, power to erect, 42
- California academy of sciences buildings—land for, 52
- plans, approval of, 52
- California palace, president as ex officio trustee of, 50
- Compensation, members serving without, 40
- Control and direction of facilities by, 42
- Creation of, 40
- Efficiency, duty to organize for, 42
- Ex officio member of park commission, chairman as, 45
- General manager of, appointment of, 41
- Lease of land, power as to, 42
- Manager, appointment of, 41
- M. H. De Young memorial museum—grounds, care of, 51
- president as ex officio trustee of, 51
- Number of members of, 40
- Program of high standards, policy as to, 42
- Recreation program of high standard, policy as to, 42
- Rental of stadiums or recreational fields, power as to, 42
- San Francisco unified school district, co-operation with, 42
- Secretary, appointment of, 41
- Stadiums, power to lease, 42
- Successor of recreation and park commission, 40
- Terms of office in, 40

RECREATION AND PARK DEPARTMENT

- Automobile parking station revenues credited to, 42
- Avenues, see **Avenues**
- Buildings permits for use of, 42
- Buildings—power of commission to erect, 42
- use restricted to recreation purposes, 42
- Chief executive officer, general manager as, 41
- Civil service—general manager's appointee exempt from, 41
- rights, continuance of, 41
- Consolidation of department, 40
- Director of the zoo, appointment and removal, 41
- Efficiency, organization for, 42
- Executive secretary to general manager of, 41
- Fund, automobile parking station revenues credited to, 42
- General manager—appointment of, 41
- executive secretary to, 41
- Incumbent employees deemed appointed under civil service, 41
- Lands abandoned for park or recreation purposes, 41.1
- Lease of lands, power as to, 42
- Manager, appointment of, 41
- Organization, powers as to, 40
- Park department, successor to, 40
- Parking revenues credited to, 42
- Playgrounds, see **Playgrounds**
- Program of high standards, policy of, 42
- Recreation centers, see **Recreation Centers**
- Recreation department, successor to, 40
- Recreation fields, see **Recreation Fields**
- Recreation program of high standards, policy of, 42
- San Francisco unified school district, co-operation with, 42
- Secretary, appointment of, 41
- Seniority of former department employees, 41
- Stadiums, lease or rental of, 42
- Successors of recreation and park department, 40
- Superintendent of parks, appointment and removal of, 41
- Superintendent of recreation, appointment and removal of, 41
- Squares, see **Squares**
- Tax levy for, 42
- Women as members in, 40

INDEX

RECREATION CENTERS

See also : **Playgrounds; Recreation Fields**
Buildings on, power to erect, 42
Control management and direction by commission, 42
New recreation centers, power to construct, 42

RECREATION COMMISSION

Recreation and park commission as successor to, 40
Secretary, continuance in office of, 41

RECREATION DEPARTMENT

See **Recreation and Park Department**
Seniority of employees under consolidation, 41

RECREATION FIELDS

See also : **Playgrounds; Recreation Centers**
Games, lease for, 42
Lease by recreation and park commission, 42
Rental of by recreation and park commission, 42
Special events, lease for, 42

RED CROSS

Service with, see **American Red Cross**

REDEMPTION FUNDS

Tax levies for, 78

REDEMPTIONS

Appropriations for as subject to administration by chief administrative officer, 72

REDUCTION OF FORCES

See also : **Layoffs**
Department heads, power as to, 20
Removal and suspension provisions not affecting rules as to, 154

REFRIGERATION PLANTS

Harbor commission as regulating, 48

REFUNDING BONDS

State law as governing, 101

REFUNDS

Retirement contributions—
refunded after employment, 165.2 (F)
upon transfer from police and fire department, 165.2 (G) (2)

REGISTRAR OF VOTERS

Appointment of employees, 173
Board of election commissioners, successor to, 173
Certificate of sponsors, preservation of, 175
Certification of statement of qualifications, 175
Challenge of initiative referendum and recall petitions, procedure on, 180
City officer, status as, 4
Civil service applied to employees under, 173
Conduct of elections, 173
Declaration of candidacy—
filed with registrar, 175
mailing to voters, 176
preservation of, 175
Election officers appointed by, 177
Elections controlled by, 173
Finance and records department, inclusion in, 61
Health board elections conducted by, 172.1 subd 2
Health service board election ballots prepared by, 172.1 subd 2
Management of elections, 173
Officer of city, status as, 4
Precincts established by, 173
Recorder designated to function as, 60
Registration controlled by, 173
Sample ballots, mailing of, 176
Signatures challenged on initiative referendum and recall of petitions, procedures upon, 180
Special elections called by, 174
Temporary forces appointed by, 173

REINSURANCE

Risks under workmen's compensation, 172

REMOVAL OF OFFICERS AND EMPLOYEES

See also : **Discipline of Officers and Employees; Suspension of Officers and Employees**
Appeal to civil service commission, 154
Appointing officer—
hearing charges, 154
refusal to act, hearing in event of, 154
Approval required for, 20
Assessor's office, 28
Board of education as subject to, 134
Cause on written charges required for, 154
Charges required for, 154
Chief administrative officers—
approval required, 20
subject to, 59

REMOVAL OF OFFICERS AND EMPLOYEES—Cont'd

Citizens, charges filed by, 154
 City attorney's office, 26
 Civil service commission examining proceedings for, 154
 Civil service commission members, 11, 140
 Commission agent charges, hearing of, 154
 Concealment as causing, 147
 Controller as removed by supervisors, 63
 Criminal convictions, duty of mayor upon, 11
 Department heads as appointing officer for, 20
 Discourteousness as cause for, 154
 Dishonesty as cause for, 154
 District attorney's office, 29
 Elective officers, assistants and employees, 11, 34
 Fire department members, 155
 Fraud as causing, 147
 Habitual intemperence as cause for, 154
 Harbor commission members as subject to, 47
 Hearings as to, 154, 155
 Immoral conduct as cause for, 154
 Inattention as cause for, 154
 Incompetence as cause for, 154
 Insubordination as cause for, 154, 157
 Intemperence as cause for, 154
 Lay-offs rules not affected by charter provisions as to, 154
 Mayor's secretaries and stenographers, 25
 Neglect of appointing officer to act, hearing in event of, 154
 Officers, generally, 11
 Patrol special police officer, 35.10
 Police department members, 155
 Political activity as cause for, 154, 157
 Procedure for, 11
 Public defender's office, 33
 Public hearing of charges, 154
 Public utilities commission members, 120
 Record of hearing furnished to civil service commission, 154
 Reduction in force rules not affected by charter provisions as to, 154
 Refusal of appointing officer to act, hearing in event of, 154
 Residence violation as ground for, 7
 School board members, generally, 11
 Sheriff's office, 32
 Special police officer, 35.9
 Superintendent of schools, 136
 Teachers, 135
 Treasurer's office, 31
 Trial of fire and police members, 155
 Vacancy upon, 6
 Welfare commission members, 61.1 subd 4

REMOVAL OF OFFICERS AND EMPLOYEES—Cont'd

Writing, proceedings to be, 154
 Written charges required for, 154

RENTALS

Stadiums and recreational fields, 42

REPAIRS

Harbor repairs paid from revenue fund, 48.1
 Inspection of applications for, 38

REPEALS

Amendment of ordinance by, 17
 Codifying ordinances, repeal by, 17

REPORTS

Actuarial reports for retirement benefit changes, 158
 Annual reports of municipal courts, 54
 Appraisals by director of property, 91
 Audit of controller's books by accountant, 68
 California academy statement of expenses and income, 52
 California palace of legion of honor report to controller, 50
 Capital improvements recommendation report by city planning department, 69.1
 Citizen having right to report of controller's books audit, 68
 City planning reports on budget items, 69, 72
 Class titles and numbers used on, 141
 Controller's annual financial report, 65
 Cost reports for departments submitted to mayor, 19 (e)
 Departmental conduct, reports as to, 21
 Departmental operation reports submitted to mayor, 19 (e)
 Department head's duty to make, 20
 False reports in civil service examinations prohibited, 147
 Financial reports, see **Financial Reports**
 Health advisory board reporting on public health matters, 61
 M. H. De Young museum report to controller, 51
 Municipal court reports, 53, 54
 Offices, report as to conduct of, 21
 Official bond reports, 67
 Planning department reports on ordinances and resolutions, 116.1
 Printing of municipal court annual report, 54
 Property loss due to negligence as reported, 88

INDEX

REPORTS—Cont'd

- Public works accounts as reported, 95
- Quarterly report of controller, 65
- Real property values, annual report as to, 94
- Set-back ordinances, enforcement by zoning administrator, 117.2
- Suspension reports exonerated from record, 154
- Zoning ordinance amendments, reports on, 117.2

REQUISITIONS

- Civil service appointments, 148
- Purchase, see **Purchases**

RESIDENCE IN CITY

- Absences, exception as to, 7
- Appointment as requiring, 7
- Chief administrative officer, 59
- Definition of, 7
- Director of planning subject to requirements, 116
- Elective office, qualification for, 7
- Employment, requirement during term of, 7
- Exceptions as to requirement of, 7
- Experts exempted from requirement of, 7
- Health reasons as excusing, 7
- Ill health as excusing, 7
- Leased utilities employees not required, 125.1
- Office, requirement during term of, 7
- Positions outside city, exception as to, 7
- Public works contracts, workers on, 98
- Removal for violation as to, 7
- Superintendent of schools as having, 136
- Technicians exempted from requirement of, 7
- Termination resulting in vacancy of office, 6
- Vacancy in office upon termination, 6
- Work outside as exception to requirement, 7

RESIGNATION

- Audit of accounts upon, 66
- Notice to civil service commission as to, 143
- Vacancy of office by, 6

RESOLUTIONS

- See also: **Ordinances**
- Action of supervisors by, 13
- Adoption of, generally, 13
- Appropriations in, reduction of, 14
- Approval by mayor, 14
- "Ayes," voting by, 13
- Certification by clerk of board, 15

RESOLUTIONS—Cont'd

- Committee reference required for, 13
- Continuance in force, 2
- Disapproval by mayor, 14
- Expenditure resolutions as dependent upon balance and income, 86
- Failure to return as approval by mayor, 14
- Files kept by clerk of board of supervisors, 12
- Index by clerk of board of supervisors, 12
- Majority vote required for, 13
- Master plan amendments, planning commission resolution as to, 116
- Mayor, transmittal to, 14
- Meetings of supervisors fixed by, 10
- "Noes," voting by, 13
- Notice of passage or finality, 15
- Number of subjects, limitation on, 13
- Objections of mayor in writing, 14
- Planning department reporting on resolutions affecting public ways and buildings, 116.1
- Publication—
 - after passage, 15
 - clerk of board of supervisors, by, 12
- Reconsideration after veto, 14
- Recording by clerk of board, 15
- Reference to committee required for, 13
- Subject expressed in title, 13
- Time—
 - action by mayor, 14
 - adoption, 13
- Title expressing subject of, 13
- Transmittal to mayor, 14
- Unanimous measures, time for action by mayor on, 14
- Veto by mayor, 14
- Votes on, recording of, 13

RETIRED PERSON

- Appointive positions, exclusion from, 163
 - (a), 165.2 (J), 168.1.12, 171.1.12
- Board membership prohibited, 163 (a), 165.2 (J), 168.1.12, 171.1.12
- City service prohibited, 163 (a), 165.2 (J), 168.1.12, 171.1.12
- Commission membership, exclusion from, 165.2 (J)
- Continuance—
 - fire department pensions after January 8, 1932, 170
 - police pensions after January 8, 1932, 167
- Death allowance for police and firemen, 168.1.4, 171.1.4
- Elective positions, exclusion from, 163
 - (a), 165.2 (J), 168.1.12, 171.1.12

RETIRED PERSON—Cont'd

Employment, effect on pension, 163 (b), 165.2 (J), 168.1.12, 71.1.12
 Fire department pensions continued after January 8, 1932, 170
 Gainful occupations by, effect of, 163 (b), 165.2 (J), 168.1.12, 171.1.12
~~Health service participation, provisions for, 172.1 subd 2 c~~
 Jury service by, 163 (a), 165.2 (J)
 Payment for city service as prohibited, 163 (a), 165.2 (J), 168.1.12, 171.1.12
 Police pension continued after January 8, 1932, 167
 Retirement board membership excluding, 159
~~War-time service by, 163~~

RETIREMENT

See also **Firemen's Retirement; Police Retirement; Retirement System**

Absences as affecting time and service credits, 165.2 (G) (3)

Actuarial—

equivalent, election as to, 165.2 (B)
 report for benefit changes, 158
 valuations, city contributions determined by, 165.2 (H) (5)

Actuary—

appointment of, 159
 contribution rates recommended as final, 160

Age for—

contribution rate based on, 165.2 (H) (1)
 elective officers, 158.1, 158.2
 requirement as to, 165 (b), 165.2 (B)
 60 years, 165.2 (B)
 62 years, 165 (b)
 65 years—
 actuarial value, allowance upon, 165.2 (B)
 fifteen years service, benefits from city contributions, 165.2 (B)
 miscellaneous members, 165.2 (B)
 66 years, 165.2 (B)
 67 years, 165.2 (B)
 68 years, 165.2 (B)
 69 years, 165.2 (B)
 70 years—
 elective officers, 158.1, 158.2
 miscellaneous members, 165 (b), 165.2 (B)

Allowances and benefits

Aggregation of different services credits for, 165.2 (B), 165.2 (C)
 board judging as to, 159
 city contributions providing portion of, 165.2 (B)

RETIREMENT—Cont'd

Allowances and benefits—Cont'd

contributions applied to provide, 165.2 (H) (2)

death, see *infra*, Death Benefits
 disability retirement, 165.2 (C)
 elective officers receiving, 158.1
 evening schools service included in computation of, 165.2 (B), 165.2 (C)
 former employees entitled to, 165.2 (F)
 gainful employment, reduction because of, 163 (b), 165.2 (J)
 increase for members retired prior to July 1, 1947, 165.1.1, 165.1.3
 minimum allowance, 165.2 (B)
~~modification affecting increases in, 165.1.1, 165.1.3~~

part-time service and compensation, including of, 165.2 (B), 165.2 (C)

raises for employees retired prior to July 1, 1947, 165.1.1, 165.1.3

retirement allowance as included in, 165.2 (A)

teachers, proportional benefits, 165 (a), 165.2 (H) (2)

workmen's compensation benefits as affecting, 165.2 (D)

Application, elective officers, 158.1

Assets of system in same fund with contributions, 165.2 (H) (6)

Average final compensation, definition of, 165.2 (A)

Beneficiaries—

death benefits to, 165.2 (E)
~~increases in benefits affecting, 165.1.1, 165.1.3~~
~~modified allowance, increases in, 165.1.1, 165.1.3~~

Benefits, see *supra*, Allowances and Benefits

Board of supervisors—

effectuation of provisions, 158
 exclusion from system, 158.1

Board, see **Retirement Board**

City contribution to funds, 165.2 (H) (5)

Compensation—

absences, compensation earnable during, 165.2 (A)
 earnable, defined, 165.2 (A)
 part-time reduced to full time for calculation of, 165.2 (B), 165.2 (C)
 deductions from, 165.2 (H) (2)
 definition of, 165.2 (A)

Compensation earnable—

death benefits consisting of, 165.2 (E)
 definition of, 165.2 (A)
 military service contributions based upon, 161.2

Compulsory, 165 (b)

INDEX

RETIREMENT—Cont'd

Conflict in provisions, effect of, 165.2 (K)
 Continuous service—
 contributions during military service as affecting, 161.1
 definition by supervisors, 161
 military service, effect of, 161, 161.1
 war effort leaves as, 161
 Contributions—
 accounts for, 165.2 (H) (2)
 actuary's determinations as to, 165.2 (H) (5)
 additional, above normal amount, 164
 age as basis of rate, 165.2 (H) (1)
 amount of, 164
 appropriations for—
 ~~generally, 165.1.1, 165.1.3~~
 prior service liabilities, 160
 April 1, 1922, court personnel contributions for service prior to, 158.3
 assets of system in same fund with, 165.2 (H) (6)
 base pay in military service as affecting, 161.2
 city as making, 160, 161.1, 161.2, 164, 165.1.1, 165.1.3, 165.2 (H) 4, 165.2 (H) 5
 continuous service affected by during military service, 161.1
 court personnel, periods prior to membership, 158.3
 death benefits, consisting of, 165.2 (E)
 deductions from compensation for, 165.2 (H) (2)
 defaults during military service, 161.1
 effective dates of provision as affecting, 165.2 (H) (3), 165.2 (H) (4)
 elective officers, for, 158.1, 158.2
 emergencies salary deductions not affecting, 70.1 subd 6
 former employee withdrawing or leaving, 165.2 (F)
 funds charged with, 160
 general fund, charging to, 160
 increases in benefits, contributions to meet, 165.1.1, 165.1.3
 individual accounts for, 165.2 (H) (2)
 installments of city contributions, 165.2 (H) (5)
 interest credited to accounts, 165.2 (H) (2)
 interest on, see *infra*, Interest
 joint participation of city and members contributions, 165.2 (H) (6)
 layoffs, disposal in event of, 165.2 (F)
 military service, during, 161.1, 161.2
 municipal court personnel, periods prior to membership, 158.3

RETIREMENT—Cont'd

Contributions—Cont'd
 officers made appointive, for, 158
 options as to amount of, 164
 other assets in same fund with, 165.2 (H) (6)
 percentages, city contributions determined by, 165.2 (H) (5)
 percentage of, 164
 prior service—
 city's contributions for, 160
 contributions credited, 165.2 (H) (3)
 rate based on age, 165.2 (H) (1)
 refunds—
 ceasing employment, 165.2 (F)
 fire department, upon transfer from, 165.2 (G) (2)
 military service, persons in, 161.2
 police department, upon transfer from, 165.2 (G) (2)
 salary deductions for, 165.2 (H) (2)
 ~~school funds charged with, 160~~
 service rendered prior to membership, for, 158.2
 superior court personnel, periods prior to membership, 158.3
 teachers, proportion, 165 (a), 165.2 (H) (2)
 transfers from police and fire departments, refund upon, 165.2 (G) (2)
 withdrawal on end of employment, 165.2 (F)
 Death—
 after retirement, benefits on, 165.2 (E)
 before retirement, benefits on, 165.2 (E)
 former employees, benefits in event of, 165.2 (F)
 Death benefits—
 generally, 165.2 (A) 165.2 (E)
 former employees, 165.2 (F)
 part retirement allowance and part death benefits, election as to, 165.2 (B)
 Disability—
 end of allowance upon recovery from, 165.2 (C)
 restoration to service upon recovery from, 165.2 (C)
 retirement board considering, 165.2 (C)
 retirement for, ten years service required, 165.2 (C)
 Effective dates of provisions as affecting contributions credits, 165.2 (H) (3), 165 (H) (4)
 Elections as to contributions disposal upon end of employment, 165.2 (F)
 Employment after, effect of, 163 (a) (b), 165.2 (J)

SAN FRANCISCO CHARTER

RETIREMENT—Cont'd

- Entitlement to after completion of services 165.2 (I)
- Fifteen years service, sixty-five years age, benefits from city contributions, 165.2 (B)
- Fifty-five years, after, with twenty years service, 165.2 (B)
- Fire department—
 - credit for service in, 165.2 (G) (2)
 - retirement of employees, see **Firemen's Retirement**
- Former employees as entitled to benefits, 165.2 (F)
- Fund, see **Retirement Fund**
- Gainful employment after, effect of, 165.2 (J)
- Harbor commission employees having benefits of, 48.2
- Increases in benefits for persons retired prior to July 1, 1947, 165.1.1, 165.1.3
- Installments of city contributions, 165.2 (H) (5)
- Interest on contributions—
 - generally, 165.2 (H) (2)
 - court personnel, contributions for period prior to membership, 158.3
 - definition of, 165.2 (A)
- Joint participation in variation results, city and member contributions engaging in, 165.2 (H) (6)
- Layoffs, contributions disposal in event of, 165.2 (F)
- Members, definition of, 165.2 (A)
- Military service affecting credits for, 158.3, 161, 161.1
- Miscellaneous officers and employees—
 - definition of, 165.2 (A)
 - elective officers included with, 158.2
 - provisions as to, 165.2
- Options—
 - contributions, amounts of, 164
 - court personnel not already members, 158.3
 - elective officers having, 158.1, 158.2
 - membership, 158.1, 158.2, 158.3, 165.2
 - time of retirement, 158.1, 165.2 (B)
- Pacific gas and electric leases, persons employed under, 165.1
- Part-time service reduced to full time for calculation purposes, 165.2 (B), 165.2 (C)
- Percentages determining city contributions to fund for, 165.2 (H) (5)
- Police department—
 - credit for service in, 165.2 (G) (2)
 - retirement of employees, see **Police Retirement**

RETIREMENT—Cont'd

- Prior contributions, crediting of, 165.2 (H) (3)
- Prior service of, 165 members credited, 165.2 (G) (4)
- Probation officer of juvenile court subject to, 58
- Raises for persons retired prior to July 1, 1947, 165.1.1, 165.1.3
- Rate of contribution for, 165.2 (H) (1)
- Reduction because of gainful employment, 163 (b), 165.2 (J)
- Refund of contributions on end of employment, 165.2 (F)
- Retirement allowance, definition of, 165.2 (A)
- Right, upon completion of service, 165.2 (I)
- Salaries for purposes of—
 - generally, 165.2 (H) (2), 165.2 (A)
 - officers over \$1000 per month, 158.1
- Saving clause in provisions as to, 165.2 (K)
- Service credits, see *infra*, Time and Service Credits
- Service required for—
 - generally, 165 (b), 165.2 (B)
 - continuous, see *supra*, Continuous Service
 - elective officers, 158.1, 158.2
 - prior service of elective officers, 158.2
- 10 years—
 - disability after, 165.2 (C)
 - miscellaneous members, 165 (b), 165.2 (B)
- 20 years—
 - elective officers, 158.1
 - miscellaneous members, 165.2 (B)
- 30 years—
 - miscellaneous members, 165 (B)
 - 60 years age, benefits from city contributions, 165.2 (B)
- System—
 - generally, see **Retirement System**
 - definition of, 165.2 (A)
- Teachers—
 - benefits as proportionate, 165 (a), 165.2 (H) (2)
 - contributions as proportionate, 165 (a), 165.2 (H) (2)
 - salaries determining proportions of contributions and benefits, 165 (a), 165.2 (H) (2)
- State benefits as affecting, 165 (a), 165 (c)
- Time and service credits—
 - absences as affecting, 165.2 (G) (3)
 - aggregation of for different services, 165.2 (B), 165.2 (c)

RETIREMENT—Cont'd

Time and service credits—Cont'd

- april 1, 1922, court personnel service prior to, 158.3
- court personnel, prior to membership, 158.3
- disability in armed service affecting computation of, 161
- election as to service prior to membership, 158.3
- evening schools service included, 165.2 (B), 165.2 (c)
- fire department service, inclusion of, 165.2 (G) (2)
- firemen, upon transfers to other departments, 171.1.8
- military service affecting, 161, 161.1
- peace-time draft affecting, 161
- photographic reporters, prior to membership, 158.3
- police department service included with, 165.2 (G) (2)
- police, upon transfers to other departments, 168.1.8
- prior service of 165 members, 165.2 (G) (4)
- prior to membership of court personnel, contributions to obtain, 158.3
- time credit, generally, 165.2 (G) (1)
- transfers from fire or police department, 165.2 (G) (2)
- war effort leaves affecting, 161
- Transfers from police and fire departments, effect of, 165.2 (G) (2)
- War effort leaves affecting credits for, 161
- Withdrawal of contributions on end of employment, 165.2 (F)
- Workmen's compensation as affecting benefits under, 165.2 (D)

RETIREMENT BOARD

- Actuary, appointment of, 159
- ~~Authorization for outside residence granted by, 7~~
- Bank officer as member, 159
- Benefits, sole judge as to, 159
- City attorney as member of, 159
- Consulting actuary appointed by, 159
- Creation of, 159
- Definition of—
 - generally, 165.2 (A)
 - police and fire retirement purposes, 168.1.1, 171.1.1
- Disability retirement considered by, 165.2 (C), 168.1.3, 171.1.3
- Duties, generally, 159
- Funds controlled by, 159
- Health service functions of, see **Health Service**

RETIREMENT BOARD—Cont'd

- Investments of funds, control of, 159
- Life insurance official as member of, 159
- Mayor appointing members of, 49
- ~~Medical examinations for outside residence, requiring of, 7~~
- Membership of, 159
- Oaths administered by actuary or secretary, 159
- ~~Permission for outside residence granted by, 7~~
- Powers, generally, 159
- President of supervisors as member of, 159
- ~~Residence outside city, excusing of, 7~~
- Retired persons excluded from, 159
- Secretary appointed by, 159
- ~~Termination of outside residence authorization, 7~~
- Term of office, 49, 159
- Workmen's compensation laws administered by, 172

RETIREMENT FUND

- Board as controlling, 159
- Contributions to, see **Firemen's Retirement; Police Retirement; Retirement**
- Generally, 165.2 (H)
- Investments as legal for insurance companies, 159
- ~~Reserve to meet increases, 165.1.1, 165.1.3~~
- ~~Transfers to meet increases in benefits, 165.1.1, 165.1.3~~

RETIREMENT SYSTEM

- See also **Firemen's Retirement; Police Retirement; Retirement**
- Actuarial reports for changes in, 158
- Actuary recommendations as basis of, 160
- Administrative costs met by city, 160
- Adult probation officer subject to provisions, 58
- Age, exclusion because of, 158
- Amendments, actuarial reports for, 158
- Applicability, supervisors determining, 165 (a)
- Board members excluded from provisions, 158, 158.1
- Board of supervisors—
 - applicability of provisions determined by, 165 (a)
 - exclusion from provisions, 158.1
- Board, see **Retirement Board**
- Borough, see **Boroughs**
- Commission members excluded from, 158, 158.1
- Continuance of existing provisions, 158
- Contributions to, see **Retirement**

SAN FRANCISCO CHARTER

RETIREMENT SYSTEM—Cont'd

Court employees and attachees as members of, 158.3
Creation of, 158
Deduction from compensations paid to, 165.2 (H) (2)
Definition of, 165.2 (A)
Elective officers—
 membership, 158, 158.1, 158.2
 options as to provision applicable, 158.2
Exclusions from, 158, 158.1
Fire boats reassignments and reappointments affecting rights under, 38.3
Fire department members, see **Firemen's Retirement**
Inclusions in, 158, 158.1, 158.2, 158.3
Joint participation in experiences, contributions held with other assets for, 165.2 (6), 168.1.10 (7), 171.1.10 (7)
Management of by board, 159
Membership of—
 generally, 158, 158.1, 158.2, 158.3
 definition of, 165.2 (A)
 fire department, 169
 police department, 166
Miscellaneous employees under, 158.2, 165, 165.2
Mortality tables as basis of, 160
Municipal court employees and attachees as members of, 158.3
Officers made appointive, exclusion from, 158
Ordinance #5561, continuance in force, 158
Part-time persons under, 165.2
Police, see **Police Retirement**
Prior service liabilities met by city, 160
School department, applicability to, 165 (a)
Service tables as basis of, 160
Stability through joint participation, 165.2 (6), 168.1.10 (7)
Substitute employees under, 165.2
Superior court employees and attachees as members of, 158.3
System, definition of, 165.2 (A)
Tables as basis of, 160
Teachers, applicability to, 165 (a)
Temporary employees under, 165.2
Underwriters fire patrol members becoming members in, 38.1
War, definition for purposes of, 161
Workmen's compensation benefits and premiums, paid by, 172

REVENUE AND EXPENSE ACCOUNTS

Items required, 76
Unencumbered balance in, 76

REVENUE APPROPRIATIONS

Unused balances, transfers of, 80

REVENUES

Accounts and accounting procedure for—
 generally, see **Accounts and Procedure**
 appropriation ordinance as authority for, 72
Automobile parking station revenues, credit to recreation and park department fund, 42
Budget estimates submission including statement of, 69
Controller's quarterly report as to, 65
Deficiencies during public emergencies as balanced by salary deductions, 70.1 subd 2
Estimates—
 mayor to supervisors, 72
 submission with budget estimates, 69
Excess collections as surplus, 80
Harbor operation, fees producing revenue for, 48
Harbor revenue fund, see **Harbor Revenue Fund**
Quarterly report of controller as to, 65

REVERSIONS

Avoidance of upon abandonment of recreation and park lands, 41.1

REVOLVING FUNDS

Audit of by controller, 66
Establishment of, 75
Public improvements, 103, 110
Purchaser's see **Purchaser of Supplies**

REWARDS

Fire department heroic or meritorious conduct, 36
Police department heroic or meritorious conduct, 35.11

RIGHT-OF-WAY AGENT

Real estate department as including, 61

RIGHTS AND POWERS

Ordinance or resolution, exercised by, 2

RIOTS

Chief of police having sheriff powers during, 35.7

RULES AND REGULATIONS

Chief administrative officer as making, 60
Civil service, changes in, 141
Fees for licenses as covering cost of, 24
Power to make and enforce, 2
Public welfare department, enforcement of, 61.1 subd 6

References are to Charter sections.

INDEX

S

SALARIES AND WAGES

Actual service time as limit upon, 150
 Adjustment—
 fire department salaries, 36.2
 ~~police department salaries, 35.5.1~~
 Advancement—
 methods provided for, 151
 prohibition as to payment, 85
 Approval of payroll before payment of, 150
 Art commission members serving without, 45
 Assessor, 28, 151.1
 Assistant attorney, generally, 34
 Board of education members, 134
 Board of permit appeals member, 39
 Board of supervisors fixing, 151
 Board, room and laundry as salary for purpose of emergency deductions, 70.1 subd 5
 Bureau of fire prevention and public safety, 38, 38.01
 California palace of legion of honor trustees serving without, 50
 City attorney, 26, 151.1
 Civil service commission—
 members, 140
 proposed schedule of, 71
 Collective bargaining contracts as basis of standardization, 151.3
 Consistent with private employment, fixing of, 151
 Continuance of, 2
 Contracts with industry as basis of standardization, 151.3
 Controller, 63, 151.1
 Corporal in police department, for retirement purposes, 166.1
 Deductions—
 emergencies, see **Salary Deductions During Emergencies**
 ~~health service, for, 172.1 subd 4~~
 jury fee payments as, 150
 police and fire retirement, 168.1.10 (3), 171.1.10 (3)
 retirement contributions, 165.2 (H) (2)
 Department heads as fixing, 151
 Director of public works, 106
 District attorney, 29, 151.1
 Earnable, see **Compensation Earnable**
 Emergencies see **Salary Deductions During Emergencies**
 Emergency appointments, time limit upon, 149
 Fire boats personnel reassigned to fire department, 38.3
 Fire department, see **Fire Department**

SALARIES AND WAGES—Cont'd

Full compensation for services, as, 150
 Groups and crafts contracts with industry as basis for, 151.3
 Harbor commission members, 47
 Harbor master's salary as fixed by commission, 48
 Health advisory board members serving without, 61
~~Health service employees fixed by board, 172.1 subd 3-d~~
 Hourly salaries converted to weekly, etc., 151
 Increases, limitation by salaries for similar services, 71
 Incumbents salaries on January 1, 1931, higher than standard compensations, continuance of, 151
 Inmate help, fixing by department heads, 151
 Institutional help, fixing by department heads, 151
 Interference with prohibited, 22
 Intermediate salaries in schedule of, 151
 Jury service affecting payments of, 150
 Law library employees, 57
 Library commission serving without, 43
 Like compensation for like service, 151
 Limitation of payment to actual service time, 150
 Maintenance as salary for purpose of emergency deductions, 70.1 subd 5
 Manager of utilities, 124
 Maxima salaries in schedule of, 151
 Maximum deductions during public emergencies, 70.1 subd 2
 Mayor, salary of, 25
~~Medical director fixed by board, 172.1 subd 2-d~~
 M. H. De Young museum trustees serving without, 51
 Military leaves affecting rights to, 153
 Minima salaries, 71, 151
 Misconduct in presenting claims for, 85
 Municipal courts employees, 55
 Non-civil service appointments, time limit, 149
 Official misconduct in presenting claims for, 85
 Ordinances for, see **Salary Ordinances**
 Other governmental services, in accord with, 151
~~Part-time employees, fixing by department heads, 151~~
 Payroll approval before payment of, 150
 Per diem compensation converted to weekly, etc., 151
 Planning commission members, 115

SAN FRANCISCO CHARTER

SALARIES AND WAGES—Cont'd

Police commissioners, 35
Police department, 35.5, 35.5 1/2 (b),
~~35.5.1~~
Private employment, in accord with, 151
Public administrator's attorney, 61
Public utilities commission members, 120
Public works contract, workers under, 98
Public works director, 106
Rates fixed by supervisors, 9
Recorder when functioning as registrar
of voters, 60
Recreation and park commission members
serving without, 40
Retirement board members serving with-
out, 159
Retirement, deductions for, 165.2 (H),
(2), 168.1.10 (3), 171.1.10 (3)
Review of collective bargaining agree-
ments, revision on, 151.3
Revision of rates under collective bar-
gaining agreements, 151.3
Salaries standardization, see Salary
Standardization
Salvage corps members, 38.1
Schedules of, see Schedules of Compen-
sation
Schools, see School Department; Teachers
Semi-monthly payment of, 85
Sheriff, of, 32, 151.1
Similar services, increases limited to serv-
ices for, 71
Specialized services, fixing in accord with
private employment, 151
Standardization, see Salary Standardiza-
tion
Superintendent of schools, 136
Survey fund for, 151
~~Surveys for police department, fixing in
accordance, 35.5.1~~
Teachers, see Teachers
Temporary appointment, time limit upon,
149
Transfer of disabled persons affecting, 156
Treasurer, 31, 151.1
~~Vacation pay, 151.4~~
Vacation rights not affecting, 151.5 (b)
War memorial trustees serving without, 44
Welfare commission members serving
without, 61.1 subd 2
Withholding from teachers salaries, 135

SALARY ATTACHED TO THE RANK

Fire department "rate of compensation"
as meaning, 36.2

SALARY DEDUCTIONS DURING EMERGENCIES

Additional deductions after 1933-1934,
70.1 subd 6
Appropriation ordinance as fixing, 70.1
subd 3
Board, room and laundry as salary for
purposes of, 70.1 subd 5
Continuance limited to anticipated emer-
gency period, 70.1 subd 4
Earthquakes emergencies, deductions dur-
ing time of, 70.1
Economic emergencies, deductions during
time of, 70.1
Flood emergencies, deductions during time
of, 70.1
Fire emergencies, deductions during time
of, 70.1
Hourly earnings, method of deducting
from, 70.1 subd 2
Installments, deductions made in, 70.1
subd 2
Maintenance as salary for purpose of,
70.1 subd 5
Maximum deductions, 70.1 subd 2
Percentages allowed during public emer-
gencies, 70.1 subd 2
Per diem compensation, method of de-
ducting, 70.1 subd 2
Retirement system contributions not af-
fected by, 70.1 subd 6
Reversion to respective funds, 70.1 subd 2
Salary ordinance as fixing, 70.1 subd 3
Temporary deductions, deemed as, 70.1
subd 4

SALARY ORDINANCES

Amendment of—
fire department salary revisions, for,
36.2
increases, for, 73
~~police department salaries, for, 35.5.1~~
Appropriation ordinance, passing at the
same time as, 73
Civil service commission check as to
legality of positions and rates, legal
basis for, 73
Class titles and numbers used on, 141
Continuing of positions by, 73
Controller's check as to legality of posi-
tions and rates, legal basis for, 73
Creating of positions by, 73
Emergency deductions figured in, 70.1
subd 3
~~Health service positions and compensa-
tions enumerated in, 172.1 subd 3 d~~
Individuals or individual positions listed
by, 73

INDEX

SALARY ORDINANCES—Cont'd

Legal basis for check of positions and rates, as, 73
Municipal railway standardization, amendment for, 151.3
Number of positions established and enumerated by, 73
Part-time employees recorded on, 151
~~Police department compensation in, 35.5.1~~
Rates of compensation established and enumerated by, 73
Referendum, exemption from, 179
Salaries not subject to standardization as fixed by, 71
Schedule of compensations, accord with, 151
Segregation of positions by, 73
Seniority increases covered by amendment, 73
Standardization establishing rates enumerated by, 73
Subdivisions for departments and organizations, 73

SALARY STANDARDIZATION

Appointive officers subject to, 151
Assistant attorney's salary governed by, 34
Budget estimate amendments required by revisions of, 151.3
Bus operator, see *infra*, Municipal Railway Employees
Charter as governing rates for employment subject to, 71
Collective bargaining with industry as basis for, 151.3
Contracts with industry as basis for, 151.3
Determination of rates as affected by, 71
Disability transfers excepted from, 156
Elective officers subject to, 151.1
Elective officers made appointive as subject to, 62
Groups or crafts, as basis for, 151.3
Hourly salary converted to weekly, etc., 151
Incumbents salaries higher than standard fixed, continuance of, 151
Investigations by civil service commission, 151
Mayor's salary in accordance, 25
M. H. De Young museum employees subject to, 51
Municipal railway employees—
 amendment of ordinances for, 151.3
 appropriation ordinance amendment for, 151.3
~~certification of schedules of other cities,~~
 151.3 (A)—

SALARY STANDARDIZATION— Cont'd

Municipal railway employees—Cont'd
 classification, payment in accordance with, 151.3 (D)
 determination as to, 151.3
 effective date of rates, 151.3 (D)
 first fiscal year for, 151.3
 fiscal year for, 151.3
~~instructor duties, extra pay for, 151.3 (C)~~
~~maximum rates to present employees, 151.3 (D)~~
~~other benefits, wages not including, 151.3 (F)~~
~~overtime for holiday work, 151.3 (E)~~
salary ordinance amendments for, 151.3
~~wage schedule not in excess of other cities, fixing of, 151.3 (B)~~
Officers subject to, 151.1
Other government services, in accordance with, 151
Per diem compensation converted to weekly, etc., 151
Private employment, in accordance with, 151
Public defender, of, 33, 151.1
Recommendation of commission as to, 151
Review of collective bargaining agreements, revision upon, 151.3
Revision upon review of collective bargaining agreements, 151.3
Salary ordinance enumerating rates established by, 73
Schedule of compensations for, see *Schedule of Compensations*
School positions as subject to, 135
Specialized services fixing in accord with nearest comparable, 151
Survey fund for, 151
Surveys by civil service commission, 151
Transfers for disability as excepted from, 156
SALARY WARRANTS
Fire department overtime, 36.1 (e)
SALES
Land not needed for recreation or park purposes, 41.1
State law controlling sales of recreation and park lands, 41.1
SALVAGE CORPS
Chief engineer, under orders of, 38.1
Civil service provisions applying to members of, 38.1
Creation of, 38.1
Death in line of duty, see *Death from Injury on Police or Fire Duty*
Duties of, 38.1

SAN FRANCISCO CHARTER

SALVAGE CORPS—Cont'd

- Fire commission having jurisdiction of, 38.1
- Increase of personnel of, 38.1
- Military leaves affecting underwriters fire patrol employees membership in, 38.1, 38.2
- Personnel increases and transfers, 38.1
- Physical requirements for members of, 38.1
- Protection of property during fire as duty of, 38.1
- Retirement benefits for members of, 168.3, 171.1.1
- Salaries of officers and members in, 38.1
- Sergeants becoming lieutenants in, 38.1
- ~~Tours of duty of members of, 38.1~~
- Transfer of personnel as prohibited, 38.1

SALVAGE OF PROPERTY

- Corps, see **Salvage Corps**
- Fire marshal, duties of, 37
- Police officers as aiding, 37
- Salvage corps, see **Salvage Corps**

SAN FRANCISCO

- Appearance in courts, 2
- Bequests, power to receive, 2
- Boundaries, 1
- Cash position as shown by reports, 65
- Charitable purposes, receiving property for, 2
- Chief administrative officer having charge of affairs of, 60, 61
- Continuance of rights and liabilities, 2
- Conveyance of property, power of, 2
- Defending in courts, 2
- Donations, power to receive, 2
- Enjoyment of property, power of, 2
- Extension of boundaries, 1
- Financial condition as shown by quarterly report, 65
- Fiscal year of, 69
- Functions, continuance of, 2
- Gifts, power to receive, 2
- Holding property, power of, 2
- Laws, power to make and enforce, 2
- Leasing of property, power of, 2
- Legal capacity, 2
- Municipal corporation, continuance as, 1
- Ordinances, power to make and enforce, 2
- Perpetual succession of, 2
- Personal property, power as to, 2
- Powers of—
 - generally, 2
 - vested in board of supervisors, 9
- Property, power as to, 2
- Purchase, power of, 2
- Real property, power as to, 2

SAN FRANCISCO—Cont'd

- Receiving property, power of, 2
- Regulations, power to make and enforce, 2
- Rights and powers appropriate, city as having, 2
- Seal of, 2
- Selling of property, power of, 2
- Suing in courts, 2
- Trust property, power to receive, 2

SAN FRANCISCO LAW LIBRARY

See **Law Library**

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

- Board of education, see **Board of Education**
- Recreational activities, direction of, 42
- Recreation and park commission, cooperation with, 42

SAN MATEO COUNTY

- Consolidation with San Francisco, see **Consolidation (San Francisco - San Mateo Counties)**
- Transportation to as furnished by acquisition of Market street railway properties, 119.1 par 1

SAVING CLAUSE

- Retirement provision containing, 165.2 (K)

SCHEDULE OF COMPENSATIONS

- Action by board of supervisors, 151
- Advancement provided for, 151
- Amendments of, 151
- Budget estimates accord with, 151
- Comparison of proposed with existing, publishing of, 151
- Economic conditions requiring changes, 151
- Effective dates of, 151
- Facts and data as basis for, 151
- Fixing of, 151
- Intermediate salaries provided in, 151
- Investigation and survey as basis for, 151
- Like compensations for like service, 151
- Limitations on salaries by proposed schedule, 71
- Maxima salaries provided in, 151
- Minima salaries provided in, 151
- Ordinance adopting, 151
- Publication of with existing schedule, 151
- Revisions, economic changes warranting, 151
- Salaries and wages paid being those fixed in, 151
- Salary ordinance accord with, 151

SCHED. OF COMPENSATIONS—
Cont'd

School department employees, for, 135
Supervisors as fixing, 9
Survey data as basis for, 151
Transmission to board of supervisors, 151

SCHOOL BOARD

See also : **Board of Education**
Removal of members, 11
Suspension of members, 11

SCHOOL DEPARTMENT

Board, see **Board of Education**
Cafeteria employees subject to civil service, 135.1
Civil service applicable to employees, 135.135.1
Monies, board regulating as to, 135
Salaries and wages—
department head as fixing, 151
excess payment reimbursed, 135
prompt payment provided for, 135
schedule of, 135
twelve equal payments, 135

SCHOOL DISTRICT

See **San Francisco Unified School District**

SCHOOLS

Cafeterial employees subject to civil service, 135.1
Department heads as permanent after probationary period, 135
Deputy superintendent as permanent, 135
District, see **San Francisco Unified School District**
Duties of board as to, 135
Maximum tax levy as exclusive of, 78
Monies, board as controlling, 135
~~Night university, provisions for, 9~~
Non-teaching positions under civil service, 135
Powers of board as to, 135
Principals as permanent after probationary period, 135
Superintendent, see **Superintendent of Schools**
Teachers for, see **Teachers**
Vice-principals as permanent after probation period, 135

SCHOOL TRAFFIC PATROL
INSPECTOR

Generally, 35.3
Pay of, 35.3

SEAL

Alteration, power of, 2
City as having, 2

SEALER OF WEIGHTS

Department of weights and measures as including functions of, 61

SEALER OF WEIGHTS AND MEASURES

City officer, status as, 4
Officer of city, status as, 4

SECOND-HAND DEALERS

Inspection of, 24

SECRETARIES

Assessor's office, 28
Board of trustees of war memorial, appointment of, 44
Boards and commissions, 19 (H)
California palace of legion of honor, 50
Fire department, 36
Library commission, 43
Mayor's secretaries, 25
M. H. De Young memorial museum, for, 51
Planning commission as appointing, 116
Police department, 35.4, 35.5
Recreation and park department, 41
Retirement board appointing, 159
Sheriff's office, 32
War memorial trustees board, appointment of, 44

SECURITY

Notes as security for money borrowed by city, 81
Temporary transfers or loans, taxes as security for, 81

SEGREGATION

Appropriations for materials, supplies and equipment as segregated, 90
Budget estimates and statements submitted to mayor, 69
Capital improvement projects report segregating projects not affecting master plans, 69.1
Salary ordinance as segregating positions, 73

SENIORITY

American red cross service affecting, 153.1 (a)
Fire boats personnel reassigned to fire department, 38.3
Fire department, see **Fire Department**
Harbor commission employees transferred from state service, 48.1
Increases as covered by salary ordinance amendments, 73

SAN FRANCISCO CHARTER

SENIORITY—Cont'd

Military leaves affecting rights, 52, 153
Promotional examinations in police and fire departments, credit for, 146
Recreation and park department employees, 41
Substitute promotional examinee as entitled to, 146.1
Vacation time considering, 151.4

SERVICE OF PROCESS AND NOTICE

Charges for removal of superintendent of schools, 136
Mayor as officer for, 25

SERVICE RECORDS

Securing of, 152

SERVICES BY CITY

Fees, recommendations as to, 20

SET-BACK RESTRICTIONS

Licenses and permits affecting, approval of, 24

SEWERS

Mains as ordered by director of public works, 112
Tax levies to support, 78

SHERIFF

Bailiffs for municipal court as detailed by, 55

Chief of police having power of during riots, 35.7

Elective officer, as, 5, 32

Generally, 32

Municipal election for, 5

Official bond of, 32

Salary of, 32, 151.1

Term of, 5

SHOPS

Purchasing department as operating, 61

SICK LEAVE

Accumulation of, 153

Fire department members entitled to, 36.1 (f)

Police department, generally, 35.1 ½ (f)

SIDEWALKS

Defects causing injuries, liability of director of public works for, 113

Good repair as duty of property owner, 108

SIMPSON AFRICAN HALL

Management and operation by California Academy of Sciences, 52

SINKING FUNDS

Budget estimates submission including statement of, 69

Harbor bonds, fees producing fund for, 48, 48.1

Improvements bonds sinking fund charges paid by special assessments, 110

Maximum tax levy as exclusive of, 78

Tax levies for, 78

SLUM CLEARANCE

Project plans submitted and acted upon, 118

SPECIAL ASSESSMENT PROJECTS

Financing of, 110

Interest on revolving fund money added to contract for, 110

SPECIAL ASSESSMENTS

See Assessments

SPECIAL COMMITTEES

Board of supervisors, of, 10

Boards and commissions, generally, 19 (c)

SPECIAL EVENTS

Admission fees, permission to charge, 42

Lease of stadiums and recreation fields for, 42

SPECIAL POLICE OFFICERS

Appointment and removal of, 35.9

SPUR TRACKS

Permits for, 114

SQUARES

See also, Parks

Automobile parking stations, lease of sub-surface space for, 42

Buildings on—

power to erect, 42

use restricted to recreation, 42

Control management and direction by commission, 42

Leases of land, 42

New squares, power to construct, 42

Tax levy to support, 78

STADIUMS

Games, lease for, 42

Lease of by recreation and park commission, 42

Rental of by recreation and park commission, 42

Special events, lease for, 42

INDEX

STANDARDIZATION

Materials, supplies and equipment as standardized, 88

STANDING COMMITTEES

Board of supervisors, of, 10
Boards and commissions, generally, 19 (c)

STATE

Harbor property as granted to city, 47

STATE EMPLOYEES RETIREMENT SYSTEM

Harbor commission employees having benefits of, 48.1

STATE HARBOR COMMISSIONERS

See **Board of State Harbor Commissioners**

STATE LAWS

Abandonment of recreation and park lands controlled by, 41.1

Adult probation committee continuing under, 58

Bonded indebtedness as governed by, 101

Borough special assessment procedure governed by, 209

Canvas of elections governed by, 178

Control of procedure for rights or powers, 3

County agricultural department including functions prescribed by, 61

County officers powers and duties under, 18

Deposits as governed by, 82

District attorney's expenditures governed by, 29

~~Health service medical care governed by, 172.1 subd 5~~

Initiative, referendum, recall, subject to, 174, 180

Juvenile probation board continuing under, 58

Municipal court powers and duties governed by, 53

Petitions for initiative, referendum and recall governed by, 180

Public works procedure governed by, 107

Refunding bond issuance as governed by, 101

Registration of voters subject to, 174

Streets and highways improvement procedure governed by, 107

Superior court governed by, 56

STATEMENTS

Deposits, daily statements of, 82

Receipts, daily statements of, 82

STATE OF CALIFORNIA

Agreements with harbor master, 48

Harbor bonded indebtedness as assumed by city, 47

STATE TAXES

Tax levy maximum as exclusive of, 78

STATUTE OF LIMITATIONS

Waiver by city, 13.1

STEINHART AQUARIUM

Management and operation by California academy of sciences, 52

Salaries and wages, 151

STENOGRAPHERS

Mayor's stenographers, 25

STREET RAILWAYS

See also: **California Street Cable Railway Co.**; **Market Street Railway**; **Municipal Railway**

Abandonment—

authority required for, 132

lines in service less than one year, 132.1

prohibition after unification with municipal railway, 132.1

Acquisition by city—

compensation fixed by agreement, 131

notice of intention, 131

operating permit subject to, 131

ordinance authorizing compensation, 131

transfer to city upon, 131

Compensation upon acquisition—

agreement fixing, 131

failure as to, result of, 131

Declaration of surrender of franchises—

announcement required, 131

certification required, 131

clerk of board of supervisors, filing with, 131

endorsement by clerk of board of supervisors, 131

filing, duty of clerk of board of supervisors as to, 131

true copy delivered to declarant, 131

Extensions, supplemental permit for, 132

Franchise—

charter provisions not applicable to operation under permit, 131

surrender for operating permit, 131

Operating permit—

acquisition by city, permit subject to, 131

revocation upon acquisition by city, 131

supplemental permits for extension, 132

term of, 131

STREET RAILWAYS—Cont'd

Operation after surrender of franchises, 131
Ordinances pertaining to regulation of, 133
Regulation by public utilities commission, 133
Same streets, use by two or more lines, 133
Speed limits, regulation of, 133
Subways, exclusive rights to as prohibited, 133
Supplemental permit for extension, 132
Transfer to city upon acquisition, 131
Tunnel, exclusive rights prohibited, 133
Twenty-five year operating permit, operation under, 131
Viaducts, exclusive rights prohibited, 133

STREETS AND HIGHWAYS

Acceptance of by supervisors after paving, 108
Defects causing injuries, liability of director of public works for, 113
Emergency construction of, 95
Licenses and permits for use of, 24
Patented pavement use of, 109
Paving of, acceptance by supervisors following, 108
Railway company having duty to repair under franchise, 108
Repairs, keeping in after paving, 108
State law governing improvement procedure for, 107
Tax levies to support, 78

STREET TRAFFIC

Generally, see **Traffic Bureau; Traffic Control and Regulation**

SUBDIVISION HEADS

Appointing officers, as, 20
Requisitions for purchases, power to issue, 20

SUBDIVISIONS

Plats, re-plats, project plans submitted to planning department, 118

SUBPOENA

Chief of police as having power of, 24
Department investigation, subpoenas for, 21
Refusal to obey, penalty for, 21
Service of in department investigation, 21
Tax collector as having power of, 24

SUBSTITUTE EMPLOYEES

Retirement system applicable to, 165.2

SUBSTITUTE PROMOTIONAL EXAMINATIONS

Generally, 146.1

SUBWAYS

Street railways, different lines as using, 133

SUITS

City and county as party, 2

SUPERINTENDENT OF BUILDING INSPECTION

Report of bureau directed to, 38

SUPERINTENDENT OF PARKS

Appointment and removal of, powers as to, 41
~~Continuance in position of, 41~~

SUPERINTENDENT OF RECREATION

Appointment and removal of, power as to, 41
~~Continuance of incumbent in position, 41~~

SUPERINTENDENT OF SCHOOLS

Appointment of, 136
Appointments, promotions, assignments, as recommended by, 135
Assistants, qualifications for, 136
Associates, qualifications for, 136
Charges for removal of, 136
City officer, superintendent as, 4
Confidential secretary for, 136
Deputy superintendent classified permanent, 135
Duties, generally, 136
Executive officer of board, as, 136
Hearing for removal of, 136
Officer of city, superintendent as, 4
Powers, generally, 136
Qualifications of, 136
Removal of, procedure for, 136
Residence qualifications, exemption from, 136
Salary of, 136
Salary standardization, exception from, 151.1
Secretary for, 136
Suspension of pending removal procedures, 136
Term of office, 136
Training required for, 136

SUPERINTENDENTS

Boards and commissions, 19 (h)

INDEX

SUPERIOR COURT

Judges—

- adult probation officer appointed by, 58
- juvenile court judge as appointing probation officer of juvenile court, 58
- Jury commissioner as, city officer, 4
- Law library, judges as ex officio trustees of, 57
- Maintenance of as provided by board of supervisors, 56
- Officer of city, secretary and jury commissioner as, 4
- Retirement system membership of employees, 158.3
- Secretary as city officer, 4
- State law as governing, 56

SUPERVISORS

See **Board of Supervisors**

SURPLUSES

- Appropriation ordinances for, 80
- Appropriations balances as, 80
- Budget estimates for appropriation of, 80
- Budget estimates submission including estimate of, 69
- Excess collections as, 80
- Following fiscal year, revenue in, 80
- Government surplus property purchases, 88.1
- Municipal railway surplus providing initial payment for market street railway, 119.1 par 5 (a)
- Property surplus, transfer of, 88
- Public utilities surplus fund established, 127
- Unused and unencumbered appropriations as, 80
- Utility surpluses transferred to general fund, 129

SURPLUS FUND

- Harbor improvements surplus fund, 48.1
- Transfer of, 77

SURVEYS

- Police department compensation fixed in accordance with, 35.5.1
- "Rate of compensation," considered in, 35.5.1
- Rates of compensation for fire department, 36.2

SUSPENSION OF OFFICERS AND EMPLOYEES

- See also: **Discipline of Officers and Employees; Removal of Officers and Employees**
- Appeal to civil service commission, 154

SUSPENSION OF OFFICERS AND EMPLOYEES—Cont'd

- Appointing officer as hearing charges, 154
- Board of education as subject to, 134
- Charges, result of, 154
- Chief administrative officer as subject to, 59
- Civil service commission examining proceedings for, 154
- Civil service inspections, interference with, 152
- Decision as final, 154
- Deleting from record upon exoneration, 154
- Elective officers, generally, 11
- Exoneration, remission upon, 154
- Expunging from record upon exoneration, 154
- Finality of appointing officer decision as to, 154
- Fire department members, 155
- Harbor commission members as subject to, 47
- Hearing by appointing officer, 154
- Notice in writing as to reasons for, 154
- Notice to civil service commission as to, 143
- Officers, generally, 11
- Official bond, suspension for insufficiency of, 67
- Patrol special police officer, 35.10
- Police department members, 155
- Political activities as cause for, 157
- Procedure for, 11
- Public utilities commission members, 120
- Salary—
 - loss for period, 154
 - payment upon exoneration of charges, 154
- Superintendent of schools, pending removal proceedings, 136

T

TAXATION

- Appropriation amounts limited to revenues produced by, 72
- Available income and revenue, taxes levied as, 206
- Borough, see **Boroughs**
- Cable car funds, for, 119.3
- California palace of legion of honor fund, for, 50
- Collections—
 - bonded indebtedness paid by in preference to city notes, 81
 - cash reserve fund for expenditures in anticipation of, 81

SAN FRANCISCO CHARTER

TAXATION—Cont'd

Collections—Cont'd

- expenditures in anticipation of, cash reserve fund for, 81
- fiscal year collections as repayment for notes, 81
- lien on, notes of city as, 81
- loans anticipating, 81
- notes of city as paid by, 81
- repayment of temporary loans by, 81
- tax anticipation loans as prior lien on, 81
- temporary loans or transfers made in anticipation of, 81

Collector—

- bond of, 8
- city officer, status as, 4
- delinquent assessments as notified by public works department, 107
- finance and record department, inclusion, 61
- inspection of businesses, power of, 24

Delinquency—

- emergencies, tax delinquencies balanced by salary deductions during, 70.1 subd 2

Judgment—

- budget estimates submission to mayor including statement of, 69

Levies—

- amount of, 78
- board of supervisors as making, 78
- bonds of utilities as excepted from authority for, 78
- cash reserve fund increased by, 81
- exclusions from maximum amount provision, 78
- increased payments provided by, 78
- maximum amount of, 78
- temporary transfers or loans as secured by, 81
- utility bonds as excepted from tax levy authority, 78

License taxes on business, 24

Market street railway payment taxation prohibited, 119.1 par 6

Minimum tax for departments, appropriation limited to revenues from, 72

Ordinances exempt from referendum, 179

Recreation and park purposes, 42

Reduction of during emergency period, 70.1 subd 6

Utilities deficiency, levy to meet, 130

TAX JUDGMENT

Budget estimate submission including statement as to, 69

TAX PAYER'S SUITS

Generally, 27

TEACHERS

Benefits from retirement as proportional, 165 (a), 165.2 (H) (2)

Certificates, granting, renewal, revocation, 135

Charges for removal of, 135

Contributions to retirement as proportional, 165 (a), 165.2 (H) (2)

Dismissal of, power as to, 135

Employment by board, 135

Hearings for removal of, 135

Merit as basis of promotion, 135

Permanent employees after probationary period, 135

Probationary period, permanent classification after, 135

Promotions, power of board as to, 135

Retirement, see **Retirement**

Salaries—

board fixing, 135

department heads fixing, 151

excess payment of, 135

prompt payment provided for, 135

retirement contributions and benefits determined by proportion, 165 (a), 165.2 (H) (2)

schedule of, 135

twelve payments, payment in, 135

~~State retirement system, benefits from, 165 (a)~~

Superintendent of schools recommending as to appointments, etc., 135

Transfer of, power of board as to, 135

Withholding from salaries of, 135

TEAMS SERVICE

Payroll as including, 150

TELEPHONE EXCHANGE

Public works department as including, 61

TELEPHONE SYSTEM

Board of supervisors as regulating private connections with, 61

Fire protection of private firms, connections for, 61

Police protection of private firms, connections for, 61

TEMPORARY EMPLOYEES

See also: **Civil Service Appointments**

Health service participation, provision for, 172.1 subd 3 e

Retirement system applicable to, 165.2

INDEX

TEMPORARY TRANSFERS AND LOANS

- Anticipation of tax collections for, 81
- Approval by officers board or commissions, 81
- Board of supervisors as making, 81
- Making of where cash reserves funds unavailable, 81
- Pension fund as exempt from, 81
- Repayment of, 81

TERM OF OFFICE

- Architect member of art commission, 45
- Artist-painter of art commission, 45
- Artist-sculptor for art commission, 45
- Audit of accounts upon expiration of, 66
- Board and commission administrative heads, 19 (h)
- Board of education members, 49, 134
- Board of health members terms as terminating, 61
- Board of permit appeals membership, 39
- Board of supervisors, 5
- Board of trustees of war memorial, 44
- Chief of police, of, 35.1
- City officers, terms of, 5
- City planning commission members, 49
- Civil service commission members, 49
- Fire commissioners, 36
- Harbor commissioners, 47
- Health advisory boards members, 61
- Landscape architect, 45
- Lay members of art commission, 45
- Library commissioner, 43
- Library trustees, 43
- Litterateur of art commission, 45
- Musician member of art commission, 45
- Officers of city, terms of, 5
- Planning commission members, 115
- Police commissioners, 35
- President of board of supervisors, 10
- Presidents of boards and commissions, 19 (b)
- Public utilities commission members, 49, 120
- Recreation and park commission, 40
- Retirement board members, 49, 159
- Superintendent of schools, 136
- Welfare commission members, of, 61.1 subd 3
- War memorial trustees, 44

TERRITORIES

- Patrol special police officer as owning, 35.10

TESTAMENTARY TRUSTS

- Boards and commissions powers and duties as to, 19 (d)

TESTIMONY

- Investigation compelling production of, 21

TIME

- Budget estimates, time for, 69
- Completion of contracts, time of as basis of award, 97
- Effective dates of ordinances, 16
- Initiative, referendum and recall proceedings, 179, 182
- Mayor's absence tolling of limitations by, 14
- Notes, payment as fixed by supervisors, 81
- Ordinances—
 - action by mayor on, 14
 - passage, 13
- Reconsideration of measures, limitation upon, 14
- Resolutions—
 - action by mayor on, 14
 - adoption, 13

TIME ROLLS

- Jury duty absence noted on, 150
- Verification, see **Payrolls**

TITLE

- California street railroad company transferred to city, 119.4 (b)
- City, vesting of gifts, 19 (d)
- Land, approval by city attorney, 26

TOLLS

- Harbor commission as regulating, 48

TORTS

- Continuance of rights and liabilities, 2

TOWING OF VESSELS

- Harbor commission as controlling, 48

TRAFFIC BUREAU

- Accident information, functions as to, 35
- Assistance of police commission as purpose of duties of, 35
- Board of supervisors, co-operation with, 35
- Captain of traffic—
 - designation of, 35.4
 - salary of, 35.5
- City planning department, co-operation with, 35
- Complaints as to traffic, attention to, 35
- Co-operation with other departments and agencies, 35
- Creation of, generally, 35
- Data as to traffic, powers and duties as to, 35

TRAFFIC BUREAU—Cont'd

Department of public works, co-operation with, 35
 Design of traffic facilities, review of, 35
 Director, see **Traffic Director**
 Engineer as assistant to director, 35.4
 Fire department, co-operation with, 35
 Functions of, generally, 35
 Planning, functions as to, 35
 Public utilities commission, co-operation with, 35
 Purpose of powers and duties of, 35
 Recommendations as purpose of powers and duties, 35
 Research, functions as to, 35
 Safety education, promotion of, 35
 Street design, studies of, 35
 Street operation, studies of, 35
 Street traffic, power to regulate, 35

TRAFFIC CONTROL AND REGULATION

Assistance with as purpose of traffic bureau, 35
 Bureau for, see **Traffic Bureau**
 Chief administrative officer as co-ordinating, 60
 Devices for, commission's powers as to, 35
 Police commission, power of, 35

TRAFFIC DIRECTOR

Assistant to, 35.4
 Designation of, 35.4
 Duties of, 35
 Salary of, 35.5

TRANSCRIPTS

Keeping of, duty as to, 26

TRANSFER OF DISABLED PERSON

Accident as cause for, 156
 Advanced age as cause for, 156
 Civil service commission as governing, 156
 Classifications to which transferred, 156
 Fire department members, application to, 156
 Military service disabilities as cause for, 156
 Police department members, application to, 156
 Recovery from disability, return upon, 156
 Return to former classification, 156
 Salaries standardization as applicable to, 156
 Salary affected by, 156

TRANSFERS

Appropriation—
 balances unused, transfers of, 80
 purchaser's revolving fund, to, 90
 Cash reserve fund insufficiency, temporary transfers or loans in case of, 81
 Departments, functions and duties of, 20
 Expenditures to be in pursuance of, 85
 Fund balances, transfer of, 80
 Person transferred with function, 2
 Salvage corps, to and from, 38.1
 Surplus funds, 77
 Unencumbered balances, transfer of, 77
 Withdrawals from treasury as being in pursuance of, 85

TREASURER

Audits of money in hands of, 66
 Banks, safe keeping of securities, 82
 Borough library funds in custody of, 203
 Clearing house representative recommended by, 84
 Clerk-stenographer confirmed under civil service, 142.1
 Disbursement of funds in custody of, 82
 Elective officer, as, 5, 31
 Health service deductions paid to, 172.1
 ~~subd 4~~
 Joint custody safe for deposits with, 83
 Losses, responsibilities for, 82
 Money, safe custody provided by ordinance, 83
 Municipal election for, 5
 Official bond of, 31
 Pension funds and securities deposited with, 82
 Property, safe custody provided by ordinance, 83
 Public money other than city's keeping of, 82
 Receipts given for moneys and checks, 82
 Record of items deposited with in joint custody safe, 83
 Safe for items in possession of, 83
 Salary of, 31, 151.1
 Term of, 5

TREASURY

Borough fund withdrawn on warrants, 200
 Checks to be delivered to, 82
 Moneys to be delivered to, 82
 Utilities receipts deposited in, 127
 Withdrawals from to be in pursuance of appropriations or transfers, 85

INDEX

TRUCKING SERVICE

Payroll as including, 150

TRUSTEES

California palace of legion of honor, 50

Law library, 4, 57

TRUSTS

City's power as to, 2

Continuance of rights and obligations, 2

Gifts by, performance for city, 19 (d)

Investment of, 82

Salary deductions during emergencies as reverting to, 70.1 subd 2

Testamentary, performance of for city, 19 (d)

TUNNELS

Street railways, different lines as using, 133

U

UNDER-SHERIFF

Appointment and removal of, 32

UNDERWRITERS FIRE PATROL

Continuance of positions in, 38.1

Fire marshal appointed on recommendation of, 37

Military leave affecting membership in salvage corps, 38.1, 38.2

Retirement system membership for employees of, 38.1

Sergeants continuing as lieutenants in salvage corps, 38.1

Service in as city service for salary purposes, 38.1

UNDESIGNATED COUNTY OFFICES

Officers for, 60

UNEMPLOYMENT

Emergency civil service appointments for relief of, 149

Salary deduction during emergencies due to, 70.1

UNENCUMBERED BALANCE

Claims unpaid when balance insufficient, 85

Definition of, 76

Emergency reserve fund balance, 79

Transfers of, 77

UNIVERSITIES

Night university, provision for, 9

USED MATERIALS

Exchange or sale by purchaser of supplies, 88

UTILITY FUNDS

Salary deductions during emergencies as reverting to, 70.1 subd 2

UTILITY HEADS

Appointing officers, as, 20

Checking of purchases, duty of, 20

Requisitions for purchases, power to issue, 20

V

VACANCY IN OFFICE

Appointments by mayor to fill, 25

Death creating, 6

Elected person failing to qualify, filling upon, 178

Events creating, 6

Harbor commission vacancies as filled by mayor, 47

Inspector in bureau of inspectors, 35.3

Law library trustees board, filling of, 57

Mayor filling vacancy of, 25

Notice to civil service commission as to, 143

Recreation and park commission, filling by mayor, 40

Retirement of officers, filling upon, 158.1

War memorial trustees, 44

Welfare commission vacancies, 61.1 subd 3

VACATIONS

Annual vacation, 151.4

Collective bargaining agreements affecting rights to, 151.5 (a)

~~Computing of time, 151.4~~

Effective date of provision as to, 151.5 (d)

Fire department members—

entitlement to, 36.1 (d)

working on, 36.1 (d)

Length according to service, 151.4

Municipal Code sections, granting and payment according to, 151.5 (c)

~~Pay for, 151.4~~

Payments made under Municipal Code deemed earned, 151.5 (c)

Per diem workers, for, 151.5

Police department, generally, 35.5 ½ (e)

Salary rates unaffected by, 151.5 (b)

Salary standardization provision affecting rights to, 151.5 (a)

~~Seniority considered for, 151.4~~

Service required for, 151.4

Wage rates unaffected by, 151.5 (b)

VARIANCES

Zoning, see **Zoning**

VERIFICATION

Damage claims, 87

Payroll, etc., for personal services, 150

VETERANS

Civil service exams credit for, 145

Disabled veterans preference in civil service exams, 145

Eligible list standing, 153

Probationary period required of, 153

War memorial trustees appointments considering, 44

VETO

Mayor as vetoing ordinances and resolutions, 14

Passage of measures over, 14

VIADUCTS

Street railways, different lines as using, 133

VOLUNTEER CIVILIAN DEFENSE

WORKERS

Injuries to, care for, 9

VOLUNTEER FIRE DEPARTMENT

Relief of members serving between 1850 and 1866, 170

VOTING

Majority vote of boards and commissions, definition of, 19

VOUCHERS

District attorney's special fund expenditures, vouchers for, 29

W

WAGES

See **Salaries and Wages**

WAIVERS

Statutes of limitation waived by city, 13.1

WAR

Definition for retirement system purposes, 161

Time of, definition for civil service examination purpose, 145.01

WAR EFFORT LEAVES

Authority for, 153

Previous military leaves deemed as, 153

Retirement service credits affected by, 161

WAREHOUSES

Fees as regulated by harbor commission, 48

Harbor commission as regulating, 48

Purchaser of supplies in charge of, 88

Purchasing department as operating, 61

WAR MEMORIAL

Administration, trustees in charge of, 44

Appropriation for, 44

Construction, trustees in charge of, 44

Employees for, appointment of, 44

Grounds, trustees in charge of, 44

Managing director, appointment of, 44

Operation, trustees in charge of, 44

WARRANT AND BOND OFFICE

Appeal bonds, issuance of, 30

Appointment of officer, 30

Appointments to, 30

Assistance for, 30

Bail bonds, issuance of, 30

Bail fixed by, 30

Cash bail fixed by, 30

Clerks for, 30

Complaints drawn by, 30

Discharge of accused person by, 30

Duties of, generally, 30

Employees for, 30

Judges, actions subject to, 30

Magistrate, actions subject to, 30

Powers of, 30

Qualifications, generally, 30

WARRANTS FOR ARREST

District attorney, issuance by, 29

Warrant and bond deputy, drawing by, 30

WARRANTS FOR EXPENDITURES

Allotments by controller to departments as limiting amounts of, 72

Appropriation items as stated in, 76

Claims as paid by, 85

Disbursements made only by, 82

District attorney's special fund, expenditures from, 29

Market street railway extension fund payments based upon, 119.1 par 4

Personal services paid by, 150

WAR-TIME APPOINTMENTS

Civil service exams for, 145.1

Limited tenure, see **Limited Tenure Appointment**

WATER

Mains as ordered by director of public works, 112

INDEX

WATER DEPARTMENT

Public utilities commission, department under, 122

WEAPONS

Police department disposal of, 35.12

WELFARE COMMISSION

Charges for removal of members of, 61.1 subd 4

Compensation, service without, 61.1 subd 2

Director of public welfare, appointed by, 61.1 subd 6

Mayor as appointing members of, 61.1 subd 2

Number of members in, 61.1 subd 1

Policy determining body, as, 61.1 subd 5

Powers of, generally, 61.1 subd 5

Public office as including service of, 61.1 subd 2

Removal of members of, 61.1 subd 4

Supervisory body, as, 61.1 subd 5

Term of office of members, 61.1 subd 3

Vacancies in membership, filling of, 61.1 subd 3

WELFARE CONDITION

Licenses and permits for businesses affecting, 24

WHARFS

Fees as regulated by harbor commission, 48

Harbor commission as regulating, 48

WIDOWS

Allowances, see **Firemen's Retirement; Police Retirement**

Civil service exams credit given to, 145

WITNESSES

Fire and police disciplinary procedures, 155

Hearings as to department affairs, witnessses for, 21

WOMEN

Protective officer, see **Police Department**

Recreation and park commission, members of, 40

WORKING BENEFITS

Police department members as entitled to, 35.5.1

WORKMEN'S COMPENSATION

Assumption of risks, determination of, 172

Benefits paid from retirement system, 172

Benefits provisions administered by retirement board, 172

Fire department retirement benefits affected by, 169 (e), 171.1.6

Patrol special police officer entitled to benefits of, 172

Police retirement benefits affected by, 166 (g), 168.1.6

Premiums paid by retirement system, 172

Reinsurance of risks, determination of, 172

Retirement benefits affected by, 165.2 (D), 166 (g), 168.1.6, 169 (e), 171.1.6

Retirement board as administering, 172

WORKS OF ART

Alteration requiring approval, 46

Art commission approval required for, 46

Definition of, 46

Location for, approval required, 46

Relocation requiring approval, 46

Removal requiring approval, 46

Z

ZONING

Administrator—

amendments, investigation and report as to, 117.2

appeal from decision of, 117.3

appointment subject to civil service provisions, 117.2

ordinances enforced by, 117.2

Appeal from change decisions, 117, 117.1

Borough, see **Boroughs**

Changes in classifications, hearings as to, appeals, 117, 117.1

Charter sections as affected by new comprehensive ordinance, 117

Classification changes made by commission on own motion, 117

Establishing procedure for, 117

Hearing as to changes, 117

Licenses and permits affecting approval of, 24

Names and addresses of interested parties furnished by applicants for change in, 117

Notice to parties interested in changes, 117

Ordinances affecting—

hearings on, 117.1

new comprehensive ordinance as affecting charter sections, 117

S
U
P
P
L
E
M
E
N
T
A
L
I
N
D
E
X

CUMULATIVE SUPPLEMENTAL INDEX TO CHARTER

EXPLANATION

This index supplements the main Charter index, written in March, 1955. It contains all of the index references written since that date to reflect changes in the Charter at the time they have occurred.

Many of the references are new. Others are intended as substitutes for lines deleted from the main index in accordance with the Table of Deletions. It should be noted that some cross-references are intended to lead the user to topics which are in the main index only and not in the Supplemental Index.

For best results in locating desired Charter provisions, this Supplemental Index should be considered an integral part of the main index.

TABLE OF DELETIONS FROM THE INDEX TO THE SAN FRANCISCO CHARTER NECESSITATED BY THE 1956 TO 1963 AMENDMENTS TO THE CHARTER

[References are to pages of the original INDEX, to columns of print (left or right), and to lines in the column. The lines are counted from the top of the column in all cases, and each line upon which a printed character appears is included. The headings "San Francisco Charter" and "Index" are not included. The lines indicated are to be deleted. Substitute lines, where proper, containing both old and new section references are supplied by the CUMULATIVE SUPPLEMENTAL INDEX.]

PAGE	COLUMN	LINE(S)
1.....	L.....	17, 18, 22, 23
1.....	R.....	20, 51-53
2.....	L.....	44
2.....	R.....	16, 17, 42, 43
3.....	L.....	54, 55
3.....	R.....	46
5.....	R.....	9-11, 14, 15, 18
6.....	R.....	46, 47
7.....	L.....	57
7.....	R.....	49, 50
8.....	L.....	15, 27, 28
16.....	L.....	16, 27-29, 31, 40, 51, 52
16.....	R.....	5, 9, 21, 32, 34, 38, 49
17.....	L.....	21, 22, 23
19.....	L.....	39
21.....	R.....	2, 3, 11
22.....	R.....	2, 3
23.....	R.....	41
24.....	L.....	10-13, 23-25, 35, 44, 45
26.....	R.....	44, 45
27.....	L.....	13
28.....	L.....	15, 16, 25 through 28
30.....	L.....	17, 18
33.....	L.....	39
33.....	R.....	35
36.....	L.....	4, 8
37.....	L.....	44, 45, 48, 53
37.....	R.....	2, 7, 30 through 38, 46
38.....	L.....	4, 15, 16, 28, 34-37, 41-45
38.....	R.....	9, 22, 38, 42
39.....	L.....	5
39.....	R.....	46, 48
44.....	R.....	14
44-46	Delete all references under headings "Health Service" and "Health Service Board." Consult those headings in the Supplemental Index for new references.	
46.....	R.....	56, 57
47.....	L.....	8, 9, 46, 47
47.....	R.....	7, 8, 20-24
50.....	R.....	46, 47, 49
51.....	R.....	5, 12, 15, 16, 21, 25, 27
55.....	R.....	14, 15
57.....	L.....	10, 11
57.....	R.....	34, 35, 44, 48, 51, 52, 53
58.....	L.....	3 through 7
58.....	R.....	12, 13, 35 through 37

SAN FRANCISCO CHARTER

TABLE OF DELETIONS FROM INDEX — Cont'd

PAGE	COLUMN	LINE(S)
59.....	R.....	31
60.....	L.....	14, 15
61.....	L.....	38
61.....	R.....	42, 43, 45
62.....	L.....	4, 11, 14, 27, 28
62.....	R.....	3-8, 10-13, 17
63.....	L.....	31, 32
63.....	R.....	12-14, 16, 35, 36, 37, 45, 46
64.....	L.....	24
64.....	R.....	13, 16, 17, 35
65.....	L.....	5, 7, 28, 29
66.....	L.....	3
66.....	R.....	33
71.....	L.....	35, 36
71.....	R.....	4 through 6
76.....	L.....	23, 33, 37, 43-50, 52
76.....	R.....	4, 6-9, 19, 22, 23, 27, 28, 31, 35, 37, 41-44, 48, 56
77.....	L.....	3-5, 19-24
77.....	R.....	23 through 26
78.....	R.....	5, 6
79.....	L.....	16, 19, 25 through 28, 32, 34, 36, 37, 41, 42
80.....	L.....	8, 9, 17
80.....	R.....	16, 17, 35-38
81.....	L.....	17, 25-27
81.....	R.....	22
83.....	L.....	42, 43
83.....	R.....	5, 6, 10, 11, 14, 17, 18, 30 through 32
84.....	R.....	8-10
85.....	L.....	6, 43
85.....	R.....	10, 11, 38, 39, 53, 54
86.....	L.....	3, 4, 6, 39, 40, 46
86.....	R.....	41, 54, 55
87.....	L.....	9, 56, 57
87.....	R.....	4, 5, 7, 10 through 16, 18, 19
88.....	L.....	17
89.....	L.....	37
90.....	L.....	9
90.....	R.....	32-39, 41-48
91.....	L.....	33, 34
92.....	R.....	15, 20
94.....	L.....	50
94.....	R.....	31, 32
95.....	L.....	34
96.....	R.....	27, 28
97.....	L.....	46, 47
97.....	R.....	35, 43, 51
98.....	L.....	4
100.....	R.....	16, 17

CUMULATIVE SUPPLEMENTAL INDEX

A

ACCIDENT INVESTIGATION BUREAU

Inspectors in, 35.3

ACTION OR SUIT

Claims procedure prerequisite to right of, 87

Compromise and settlement of claims under ordinances, 87

Dismissal under ordinance, 87

ACTUARIAL REPORTS

Health service changes requiring, 172.1.3

ADJUSTMENT

Claims, ordinance prescribing method, 87

Police department salaries, by survey, 35.5.1, 35.5.2

ADMISSION FEES

Permission to charge, 42.3

AFFIDAVITS

Health service disclaimers, stating of, 172.1

AIRPORT

Control, management or operation, relinquishment as subject to ordinances and referendum, 93

AMENDMENTS

Salary ordinances affecting police department, 35.5.1, 35.5.2

APPEALS

Suspension of firemen or policemen, 155

APPOINTING OFFICER

Health service medical director as, 172.1.9

APPOINTMENTS

Health service board membership, 172.1.1

Health service system medical director, executive officer, medical advisor, 172.1.9

Retired persons as barred from, 163 (a), 165.2 (j), 168.1.12, 171.12

APPROPRIATIONS

Health service system, for, 172.1.11, 172.1.14

APPROPRIATIONS—Cont'd

Retirement fund contributions, for, 160, 165.1.1, 165.1.3, 165.1.4, 168.1.5.1, 168.1.5.2

APPROPRIATIONS ORDINANCES

Amendment as to police department salaries, 35.5.1, 35.5.2

Police department salaries provided by amendment of, 35.5.1, 35.5.2

ARBORETUM

See Strybing Arboretum and Botanical Gardens

ART COMMISSION

Quorum for official business, 45

ATTORNEYS

Public defender, see **Public defender**

Salary standardization applicable to attorney appointed by public administrator, 151.2

AUDITS

Health service system funds, 172.1.12

AUTOMATION

Re-employment of laid-off employees, 156.1

AUTOMOBILE PARKING

Lease of parks and squares subsurface space or, 42.2

AVENUES

Buildings on, use restricted to recreation, 42.2

Leases of land, 42.2

B

BALLOTS

Health service board elections, for, 172.1.1

BIDS

Airport leases subject to, 93

Leases subject to, 93

Produce market relocation, property transactions for, 92.1

Purchases by city, bids on, 88.2

BOARD OF EDUCATION

- Health service system, appropriations for, 172.1.11, 172.1.14
- Retirement of employees under state systems, contributions reductions for, 165.4
- Withdrawal of employees from city retirement, contributions reductions for, 165.4

BOARD OF SUPERVISORS

- Confirmation of appointment of chief administrative officer, 59
- Disaster powers, 9, 25
- Health service system—
 - appropriations for, 172.1.11, 172.1.12
 - ordinances, power to enact, 172.1.15
- Health service board membership by finance committee chairman, 172.1.1
- Interest by members in city transactions prohibited, 222
- Interest of officers or employees in contracts, sales, etc., determined by, 222.1
- Lease of excess real property, authorizing, 93, 93.1
- Lease of park or recreation grounds, approval, 42.2
- Local sales and use taxes, powers as to, 24.1
- Narcotic law enforcement fund, appropriation for, 35.8.1
- Mayor, members acting as in case of disaster, 25
- Police department salaries, fixing of, 35.5.1, 35.5.2
- Private business or practice by members, restrictions, 222
- Residence requirements for officers and employees, fixing of, 7
- Retirement system adjustments required by social security, power to make, 165.6(J)
- Sales taxes, power to legislate as to, 24.1
- Social security coverage of employees, providing conditions for, 165.6
- referendum, subjection to, 165.6(J)
- Uniform sales and use taxes, powers as to, 24.1
- Use taxes, power to legislate as to, 24.1

BOARDS

- Electoral status required for appointment to, 7
- Health service, see **Health Service Board**
- Qualification of appointees, generally, 7

BONDS

- Capital improvements in utilities, financing of, 74

BOTANICAL GARDENS

- See **Strybing Arboretum and Botanical Gardens**

BROKEN PROPERTY

- Employees' property damaged in line of duty, repair or replacement of, 151.6

BUILDINGS

- Avenues, buildings on, 42, 42.2
- Recreation and park—
 - commission powers as to, 42, 42.2
 - use restricted, 42.2

BUREAU OF CRIMINAL INFORMATION

- Director, designation and salary of, 35.4, 35.5

BUREAU OF FIRE INVESTIGATION

- Days off, 36
- Fire department ranks, 36
- Heroic conduct award, 36
- Holidays, working on, 36
- Hours of work, 36
- Investigator—
 - establishment of, 36, 38.01
 - salary of, 36, 36.2, 38.01
- Lieutenant—
 - establishment of, 36, 38.01
 - rank established, 36, 38.01
 - salary of, 36, 36.2, 38.01
- Meritorious conduct award, 36
- Overtime work, 36
- Tours of duty, see **Fire Department**
- Work schedules, see **Fire Department**

BUREAU OF FIRE PREVENTION AND PUBLIC SAFETY

- Captain—
 - establishment of, 36, 38.01
 - rank established, 36, 38.01
 - salary, 36, 36.2, 38.01
- Days off, 36
- Fire department ranks, 36
- Heroic conduct award, 36
- Holidays, working on, 36
- Hours of work, 36
- Inspector—
 - establishment of, 36, 38.01
 - rank established, 36, 38.01
 - salary, 36, 36.2, 38.01

**BUREAU OF FIRE PREVENTION
AND PUBLIC SAFETY—Cont'd**

Lieutenant—

- establishment of, 36, 38.01
- rank established, 36, 38.01
- salary, 36, 36.2, 38.01

Meritorious conduct award, 36

Overtime work, 36

Salaries for personnel, 36, 36.2, 38, 38.01

Tours of duty, see Fire Department

Work schedules, see Fire Department

BUREAU OF INSPECTORS

Assistant inspectors in, 35.3, 35.5, 35.5.4

Salary of assistant inspectors, 35.5.4

BUREAU OF SPECIAL SERVICES

Inspectors in, 35.3

BUSINESS

Private business by officers and employees, limitation as to, 222

BUS OPERATORS

See Municipal Railway

C

CHIEF ADMINISTRATIVE OFFICER

Approval of appointment, 59

Assistant director of public health, appointment of, 61

Confirmation of appointment, 59

Mayor, successor to office of in case of disaster, 25

CITIZENSHIP

Officers required to have, 7

CITY & COUNTY

Definitions under social security coverage provisions, 165.6

CITY ATTORNEY

Assistant acting on health service board, 172.1.1

Confidential secretary for, 34.2

Health service board, membership on, 172.1.1

Secretary for, confidential, 34.2

CIVIL SERVICE

Transfers due to automation, 156.1

CIVIL SERVICE APPOINTMENTS

Re-employment after layoff due to automation, 156.1

Transfer due to automation, 156.1

CIVIL SERVICE COMMISSION

Protests of examinations, action upon, 147.1

CIVIL SERVICE EXAMINATIONS

Changes barred after rating and identification, 147.1

Eligibles list prepared after, 147.1

Expediting, 147.1

Identification of participants, changes barred after, 147.1

Official rating key, adoption and use of, 147.1

Probation, transferred employees, 156.1

Protest of questions and answers, 147.1

**Rating—
inspection prior to, 147.1**

key, adoption and use of, 147.1

protest and action prior to, 147.1

Review of papers by participants, 147.1

Scoring, see Rating, supra

Security of material, provisions for, 147.1

Speeding up processing, 147.1

Tentative eligibles list, preparation of, 147.1

Transferred employees subject to new examination, 156.1

CIVIL SERVICE SYSTEM

Health service employees under, 172.1.10

CLAIMS

Adjustment, method prescribed by ordinances, 87

Damage claims against city, procedure for, 87

Filing of, 87

Law governing filing of, 87

Money claims, procedure for, 87

**CLASSIFICATION OF
EMPLOYMENT**

Municipal railway standardized wages paid according to, 151.3 (e)

COMMISSIONS

Art, see Art Commission

Elector status required for appointment to, 7

Library commission, 43

Qualification of appointees, generally, 7

COMPROMISE AND SETTLEMENT

Method determined by ordinance, 87

CONFIDENTIAL SECRETARY

See Secretaries

CONFIRMATION

Remote interests, prior contracts by officers and employees having, 222.1

CONFLICTING INTERESTS

Defined, 222.1
Dismissal of officers and employees for, 222

CONTINUANCE

Health service employees in positions, 172.1.10

CONTRACTS

Interest in prohibited, 222.1
Recreation and park facilities building contracts, award and administration, 42

CONTROLLER

Health service transfers and contributions, functions as to, 172.1.11, 172.1.12

CRIMES

Investigation and detection, fund for, 35.8
Money for investigation and detection, 35.8

D

DAMAGES

Claim against city for, filing of, 87

DEFINITIONS

City and county, 165.6
Interest in contracts, sales, etc., 222.1
Remote interest, 222.1

DEPARTMENT HEADS

Medical director of health service system as, 172.1.9

DEPARTMENT OF PUBLIC WORKS

See **Public Works Department**

DEPARTMENTS

Health service system as, 172.1; and see **Health Service**

DEPOSITS

Health service contributions, with treasurer, 172.1.12

DIRECTOR OF HEALTH

Assistant director, appointment and responsibilities of, 61

DISASTERS

Continuation of government, powers as to, 9, 25

DISCLOSURE

Remote interest in contracts, sales, etc., 222.1

DISPLACED INDUSTRIES

Relocation of food industries affected by redevelopment plans, lands for, 92.1

DISTRICT ATTORNEY

Confidential secretary for, 34.1
Secretary for, confidential, 34.1

DIVISION OF FIRE PREVENTION AND INVESTIGATION

Chief's rank established, 36
Salary of chief, 36, 36.2

E

ELECTION

Vacation, choice as to accumulation of, 151.4.1

ELECTIONS

Health service board membership, 172.1.1
Rejection of unsolicited sponsor, 175
Sponsor of candidates—
 rejection of unsolicited sponsor, right to, 175

ELIGIBLES LISTS

Part-time employees positions filled from, 142
Preparation after civil service examinations, 145, 147.1

EMERGENCIES

Continuation of government during, 9, 25

EMERGENCY HOSPITALS

Assistant director of public health, responsibilities of, 61

EMPLOYEES

Citizenship requirement, 7
Interest in city transactions prohibited, 222
Private business or professional practice, restriction, 222
Residence requirements fixed by ordinance, 7
Resigned, definition for health service membership, 172.1.6

EQUIPMENT

Employees' property lost or damaged in line of duty, repair or replacement, 151.6

EXCHANGE OF PROPERTY

Produce market relocation, for, 92.1

EXPERT WITNESSES

Retired persons serving as, 163 (a)

F

FEDERAL SOCIAL SECURITY

See titles **Retirement; Social Security Coverage**

FILING

Claims for money or damages, 87

FIREBOATS

Engineers—

rank established, 36
salary, 36, 36.2

Marine engineers—

rank established, 36
salary, 36, 36.2, 36.2.1

Pilots—

rank established, 36
salary, 36, 36.2, 36.2.1

Salaries of personnel, 36, 36.2, 36.2.1

FIRE CHIEF

Rank established, 36

Salary of, 36, 36.2

Secretary—

rank established, 36
salary, 36, 36.2

FIRE DEPARTMENT

Apparatus inspector, see *infra*, **Inspector of apparatus**

Assignments supervisor, see *infra*, **Supervisor of assignments**

Assistant chiefs—

rank established, 36
salary, 36, 36.2

Battalion chiefs—

rank established, 36
salary, 36, 36.2

Captain—

battalion chief examination, eligibility, 38.01

fire prevention and public safety bureau, see **Bureau of Fire Prevention and Public Safety**

rank established, 36
salary, 36, 36.2, 36.2.1

Chief, division of prevention and investigation—

rank established, 36
salary, 36, 36.2

Chief's operator—

rank established, 36
salary, 36, 36.2

FIRE DEPARTMENT—Cont'd

Deputy chief—

rank established, 36
salary, 36, 36.2

Division of fire prevention and investigation—

chief's rank established, 36
salary of chief, 36, 36.2

Drivers—

rank established, 36
salary, 36, 36.2

Engineers—

rank established, 36
salary, 36, 36.2

Holidays, working on, 36

Hosemen—

rank established, 36
salary, 36, 36.2

Inspector, fire prevention bureau—

rank established, 36, 38.01
salary, 36, 36.2, 38.01

Inspector of apparatus—

rank established, 36
salary, 36, 36.2

Investigation, see *infra*, **Prevention and investigation**

Investigator, bureau of fire investigation—

rank established, 36, 38.01
salary, 36, 36.2, 38.01

Lieutenant—

fire investigation bureau, see **Bureau of Fire Investigation**

fire prevention and public safety bureau, see **Bureau of Fire Prevention and Public Safety**

rank established, 36
salary, 36, 36.2

Prevention and investigation—

bureau, see **Bureau of Fire Investigation; Bureau of Fire Prevention and Public Safety; Division of Fire Prevention and Investigation**

chief, rank and salary, 36, 36.2

Private activities etc., of officers and employees restricted, 222

Ranks in, 36, 38.01, 38.1

Salaries and wages, generally, 36, 36.1, 36.2, 36.2.1, 38.01

Secretaries—

rank established, 36
salary, 36, 36.2

Supervisor of assignments

rank established, 36
salary, 36, 36.2

Tillermen—

rank established, 36
salary, 36, 36.2

Tours of duty, salvage corps members, 36

FIRE DEPARTMENT—Cont'd

Truckmen—

rank established, 36
salary, 36, 36.2

Work schedules, see *supra* Tours of duty

FIREMEN

Equipment or other personal property damaged or lost in line of duty, repair or replacement of, 151.6

Private employment and activities, rules and regulations against, 222

FIREMEN'S RETIREMENT

Adjustment of disability retirement allowance, 171.1.5.1

Allowances and benefits—

adjustment in disability retirement allowances, 171.1.5.1

death benefits, see Death allowance and benefits, *infra*

disabilities affecting, 171.1.3, 171.1.5, 171.1.5.1

increase in disability retirement allowance, 171.1.5.1

Appropriations for increase in disability retirement allowance, 171.1.5.1

Contributions—

appropriations for increases in disability retirement allowances, 171.1.5.1

City's—

increases in disability retirement allowances, for, 171.1.5.1

increases in disability retirement allowances, for, 171.1.5.1

transfers of funds for increase in disability retirement allowances, 171.1.5.1

Death allowance and benefits—

beneficiaries receiving, 171.1.7

Disability—

adjustment of allowances, 171.1.5.1

continuance of allowance on death after retirement for, 171.1.5

death due to, continuance of allowances, 171.1.5

increase in retirement allowance, 171.1.5.1

Expert witness for city, serving after retirement, 163(a)

Increase in disability retirement allowances, 171.1.5.1

Reduction of widow's, etc., allowance, 171.1.5

Social security coverage, exclusion from, 165.6

Transfer of funds for increase in disability retirement allowances, 171.1.5.1

FIRE DEPARTMENT—Cont'd

Widow allowances—

reduction due to death prior to qualification for service retirement, 171.1.5

Witness for city, service after retirement, 163(a)

FIRE PREVENTION AND INVESTIGATION

See **Bureau of Fire Investigation; Bureau of Fire Prevention and Public Safety; Division of Fire Prevention and Investigation**

FUNDS

Health service system, creation of, 172.1.11

Recreation and park facilities, funds for, 42

G

GARAGES

Underground garages beneath parks and squares, 42.2

H

HASSLER HEALTH HOME

Assistant director of public health, responsibilities of, 61

HEALTH SERVICE

Accounting system for funds, 172.1.12

Actuarial reports prerequisite to approval of plans, 172.1.3

Adequacy of services and fees, annual review of, 172.1.4

Administration of—

generally, 172.1

expenses of administration, city and school district contributions for, 172.1.11

power and duty of board as to, 172.1.8

Administrative expenses, contributions for, 172.1.11

Admissions to system, power of board as to, 172.1.8 (e)

Affidavits disclaiming benefits on religious grounds, 172.1

Amounts of contributions, determining and certifying, 172.1.12

Annual review of services and fees, 172.1.4

Appropriations for—

generally, 172.1.11

prohibitions as to, 172.1.14

Audit of funds, 172.1.12

Board, see **Health Service Board**

HEALTH SERVICE—Cont'd

- Changes in services, adoption and approval of, 172.1.4
- Charging of city and school district contributions, 172.1.11
- Charter provisions as applicable to, 172.1.10
- Choice as to physicians, etc., 172.1.7
- Civil service provisions applicable to employees, 172.1.10
- Claims, limitations as to, 172.1.14
- Compensation, see *infra*, Fees and compensation
- Conflicts between board and director, avoidance of, 172.1.9
- Continuance—
 - employees in positions, 172.1.10
 - old plans pending new plans, 172.1.12
- Contracts for services—
 - limitation as to, 172.1.7
 - power and duty as to, 172.1.8 (d)
- Contributions—
 - administrative expenses, 172.1.11
 - amounts determined and certified, 172.1.12
 - charging against funds, 172.1.11
 - city contributions, 172.1.11, 172.1.14
 - deductions for, 172.1.12
 - deposit with treasurer, 172.1.12
 - details stated in plans, 172.1.5
 - limitation on city and school district contributions, 172.1.11, 172.1.14
 - matching contributions by city and school district, 172.1.11
 - members' contributions, 172.1.11
 - monthly basis, on, 172.1.11, 172.1.1
 - retired persons' contributions, 172.1.11
 - school district contributions, 172.1.11, 172.1.14
- Costs—
 - contributions, see *supra*, Contributions
 - records and annual review of, 172.1.8 (a), (b)
 - sharing by employees, city, school district, 172.1.11
- Creation of system, 172.1
- Deceased employees' dependents, provisions for, 172.1.6
- Deductions for contributions, 172.1.12
- Deficits of prior system, disposal of, 172.1.15
- Dependents, provisions for, 172.1.6, 172.1.11

HEALTH SERVICE—Cont'd

- Details as to benefits and contributions, plans required to state, 172.1.6
- Director, see *infra*, Medical director
- Disbursements—
 - audit, prerequisite, 172.1.12
 - exclusively from fund, 172.1.14
- Disclaimer of benefits on religious grounds, 172.1
- Doctors, free choice as to, 172.1.7
- Effectuating of plans, duty as to, 172.1.8
- Emergency care in public facilities, 172.1.13
- Employees—
 - civil service rights of, 172.1.10
 - continuance in positions, 172.1.10
 - resigned employees participating, 172.1.6
 - retired employees participating, 172.1.6
- Exclusive contracts for services prohibited, 172.1.7
- Executive officer and medical advisor as alternative to medical director, 172.1.0
- Exemption from system—
 - other medical care, for, 172.1
 - religious reasons for, 172.1
 - rules and regulations as to, power to make, 172.1.8 (e)
 - salary limits as cause for, 172.1
- Expenses borne by fund, 172.1.14
- Favoritism prohibited, 172.1.8 (c)
- Fees and compensation—
 - revision of, 172.1.4
 - right to serve at uniform rates, 172.1.7
 - uniform rates of, 172.1.7
- Former employees, provision for, 172.1.6
- Free choice of care, provision for, 172.1.7
- Funds—
 - administration of, 172.1.12
 - audits before disbursements, 172.1.12
 - claims upon, limitation of, 172.1.14
 - control of, 172.1.12
 - creation of, 172.1.11
 - deductions for, 172.1.12
 - expenses paid exclusively from, 172.1.14
 - disbursements from, 172.1.12, 172.1.14
 - investment and control of, 172.1.12
 - monthly payments to, 172.1.12
 - use by board, power as to, 172.1.8 (d)
- Hearings for review of care and fee adequacy, 172.1.4
- Historical costs for medical and hospital care, keeping of and annual review, 172.1.8 (a), (b)

HEALTH SERVICE—Cont'd

Hospitals—

- free choice as to, 172.1.7
- right to render services, 172.1.7

Indemnity plans, power to adopt, 172.1.3

Insurance plans, power to adopt, 172.1.3

Matching contributions by city and school district, 172.1.11

Medical advisor for executive officer, 172.1.9

Medical care—

- adequacy, review of, 172.1.4
- choice as to physician, etc., 172.1.7
- definition of, 172.1.13
- emergency care in public facilities, 172.1.13
- exclusive contracts prohibited, 172.1.7
- free choice as to, 172.1.7
- indemnity plans, power to adopt, 172.1.3
- insurance plans, power to adopt, 172.1.3
- professional conduct law governing, 172.1.13
- public health facilities, use of, 172.1.13
- revisions as to, 172.1.4
- right to render at uniform rates 172.1.7

Medical director—

- appointment of, 172.1.9
- Charter provisions as applicable to, 172.1.10
- effectuation of plans through, 172.1.8 (d), 172.1.9
- executive officer with medical advisor as alternative to, 172.1.9

Membership of system, 172.1

Monthly payments to fund, 172.1.12

Nurses—

- free choice as to, 172.1.7
- right to render services, 172.1.7

Ordinance—

- approval of plans by, 172.1.2, 172.1.3
- power to enact, 172.1.5
- revisions approved by, 172.1.4

Participants specified, 172.1.6

Pharmacists—

- free choice as to, 172.1.7
- right to render services, 172.1.7

Physician—

- definition of, 172.1.7
- right to render services, 172.1.7

Prayer healing adherents exempted, 172.1

Prior system, expenses of, 172.1.15

Professional conduct law governing, 172.1.13

HEALTH SERVICE—Cont'd

Public health facilities, use of, 172.1.13

Rates of fees, see supra, Fees and compensation

Records and review of costs for services, 172.1.8 (a), (b)

Religious beliefs, exemption on ground of, 172.1

Rescissions by new plans, continuance of old plans pending, 172.1.2

Resigned employees, provisions for, 172.1.6, 172.1.11

Retired persons, provisions for, 172.1.6, 172.1.11

Retirement system members as eligible for membership, 172.1

Revisions in services, adoption and approval of, 172.1.4

Right to render services at uniform rates, 172.1.7

Rules and regulations—

- clarity and completeness required, 172.1.9
- making of, power as to, 172.1.8 (e)
- services subject to, 172.1.7

Salaries—

- deductions for contributions, 172.1.12
- limits as basis for exemptions, 172.1

School district employees as members, 172.1, 172.1.6

Special privilege prohibited, 172.1.8 (c)

Specific provisions, plans required to state, 172.1.5

Standards of services, 172.1.13

State teachers retirement system, eligibility after transfer to, 172.1.6

Superseding plans, continuance of old plans pending, 172.1.2

Surpluses of previous system, disposal of, 172.1.15

Teachers, provisions for, 172.1, 172.1.6, 172.1.11

Temporary employees, provisions for, 172.1.6

Time limits for action—

- health service board administration matters, 172.1.8 (f)

Uniform rates, right to serve at, 172.1.7

Voluntary membership, power of board as to, 172.1.8 (e)

Writing /required for matters submitted to board, 172.1.8 (f)

HEALTH SERVICE BOARD

Adequacy of care and fees reviewed by, 172.1.4
 Administration of system by, 172.1, 172.1.8, 172.1.9
 Admissions to systems, power as to, 172.1.8 (e)
 Affidavits of disclaimer filed with, 172.1
 Appeal board of, activities as confined to, 172.1.9
 Appointment to by mayor, 172.1.1
 Assistant acting for city attorney, 172.1.1
 Ballots for electing members, 172.1.1
 Bond, official, of members, 172.1.1
 Charter provisions as applicable to, 172.1.10
 City attorney as member of, 172.1.1
 Conflicts between board and director, avoidance of, 172.1.9
 Contract power of, 172.1.8 (e)
 Disclaimers filed with, 172.1
 Doctor of medicine as member, 172.1.1
 Duties and powers, generally, 172.1.8
 Duty to adopt plans, 172.1.3
 Elective membership of, 172.1.1
 Exemptions, power to grant, 172.1.8 (e)
 Finance committee chairman as member of, 172.1.1
 Fund administered and invested by, 172.1.12
 Hearings as to adequacy of care and fees conducted by, 172.1.4
 Indemnification plan, power to adopt, 172.1.3
 Insurance official as member, 172.1.1
 Insurance plan, power to adopt, 172.1.3
 Mayor's appointments to, 172.1.1
 Medical care plans, power to adopt, 172.1.3
 Membership of, 172.1.1
 Nominations for election to, 172.1.1
 Official bond of members, 172.1.1
 Policy matters, activities confined to, 172.1.9
 Powers and duties, generally, 172.1.8
 Power to adopt plans, 172.1.3
 Rules and regulations, power as to, 172.1.8 (e)
 Submission of matters to, 172.1.8 (f)
 Terms of office of, 172.1.1
 Vacancies in office, filling of, 172.1.1

HEARINGS

Fees for medical care reviewed by, 172.1.4
 Health service, review of adequacy of, 172.1.4
 Medical care adequacy reviewed at, 172.1.4
 Produce market relocation, hearings on property transactions for, 92.1
 Suspension of firemen or policemen, 155

HOLIDAYS

Municipal railway platform employees and operators, provisions for, 151.3(f)
 Vacation, pay for holidays during, 151.3(f), 151.4
 Vacation period, effect on, 151.4.3

HOSPITALS

Assistant director of public health, responsibilities of, 61
 Emergency hospitals, responsibilities of assistant director of health, 61
 San Francisco general hospital, administrative duties of assistant director of public health, 61

I

INFLUENCE

Prohibited acts, 222.1

INITIATIVE, REFERENDUM, AND RECALL

Airport lease referendum, 93
 Leases of real property subject to referendum, 93, 93.1, 123
 Social security coverage, referendum as to, 165.6(J)

INSPECTORS

Fire department, see **Fire Department**
 Accident investigation bureau, Bureau of Special Services, Intelligence Unit, Juvenile Bureau, 35.3

INTELLIGENCE UNIT (Police)

Inspector in, 35.3

INTEREST (contracts, etc.)

Definition of, 222.1
 Direct interest prohibiting influence, 222.1
 Disclosure of remote interest in contracts, sales, etc. required, 222.1
 Indirect interest prohibiting influence, 222.1
 Influence, prohibited acts, 222.1
 Official capacity, prohibited acts in, 222.1
 Remote interest excluded from prohibitions, 222.1

INVESTMENTS

Health service funds, 172.1.12

J

JUVENILE BUREAU

Inspectors in, 35.3

L

LAGUNA HONDA HOME

Assistant director of public health, responsibilities of, 61

LAND

Food industry relocation, property transactions for, 92.1
Leases of, see **Leases**

LAYOFF

Automation causing, 156.1

LEASES

Automobile parking in underground garages, 42.2
Director of property, duties of, 93
Garages underground, park and recreation property for, 42.2
Length of period, extending by ordinance, 93.1
Produce market relocation, lands for, 92.1
Recreation and park department powers as to, 42.2, 42.3
Referendum as to airport leases, 93
Stadiums and recreation fields, 42.3
Underground garages, parks and squares, 42.2

LIBRARY COMMISSION

Reduction in membership, 43

LIBRARY TRUSTEES

Commission as successors in office, 43

LOST PROPERTY

Employees' property lost in line of duty, replacement of, 151.6

M

MARKET

Municipal market for produce, land transactions for, 92.1
Produce market, property transactions for relocation of, 92.1

MAYOR

Acting mayor in case of disaster, 25
Board of supervisors acting in case of disaster, 25
Chief administrative officer acting in case of disaster, 25
Disaster, succession to office in case of, 25
Emergency causing absence, succession in case of, 25
Succession to office in case of disaster, 25

MONEY

Claim against city for, filing of, 87

MOTORCYCLES

Police officers' compensation for service on, 35.5.2

MUNICIPAL RAILWAY

Additional pay for holiday work for operators and platform employees, 151.3(f)
Basic wage, certain employees, 151.3 (a)
Bus operator—
 holiday provisions for, 151.3(f)
 residence requirement, 144
Classification, standardized salary paid in accordance with, 151.3 (e)
Conductor, residence requirement, 144
Equipment or other personal property of employees damaged or lost in line of duty, repair or replacement of, 151.6
Extra pay—
 holiday work, operators and platform employees, 151.3(d)
 instructor duties, 151.3(d)
Holiday provisions for operators and platform employees, 151.3(f)
Instructor duties, extra pay for, 151.3 (e)
Maximum rates of pay to present employees under standardization, 151.3 (e)
Motormen, residence requirement, 144
Other cities—
 schedules, certification of, 151.3 (b)
 standardization in accordance with, 151.3 (a—g)
Platform employees, holiday provisions for, 151.3(f)
Residence requirements, exception, 144
Social security coverage for employees of, 165.6(F)
Trainee platform men and operators, rate of pay for, 151.3

N

NARCOTIC LAWS

Fund for enforcement of, 35.8.1

NOMINATION

Health service board candidates, 172.1.1

NON-CIVIL SERVICE EMPLOYEES

Cafeteria employees, appointments, 135.1
Removal of, power as to, 20, 34

NOTICE

Produce market relocation, hearings on property transactions for, 92.1

NUMBERS

Singular as including plural, 165.6(H)

O

OFFICIAL BONDS

Health service board members, 172.1.1

OFFICERS

- Citizenship required, 7
- Health service membership, 172.1; and see **Health Service**
- Interest in city transactions prohibited, 222
- Private business or professional practice, restriction, 222
- Qualifications of, generally, 7
- Residence requirement during incumbency, 7

OLD AGE SECURITY

- See **Firemen's Retirement; Police Retirement; Retirement; Retirement System; Social Security Coverage**

ORDINANCE

- Airport property lease, approval of, 93
- Health service system—
 - plans, approval of, 172.1.2, 172.1.3
 - power to enact as to, 172.1.15
 - revisions, approval of, 172.1.4
- Lease of real property, approval by, 93, 93.1
- Police department salaries fixed by, 35.5.1, 35.5.2
- Purchasing procedure by, 88.2
- Residence requirements fixed by, 7
- Revolving fund purchase limit set by, 88.2
- Social security coverage, under, 165.6
- Vacation provisions regulated by, 151.4.6

OTHER CITIES

- Police department salaries fixed by surveys of, 35.5.1, 35.5.2

OUTSIDE ACTIVITIES

- Limitations and prohibitions as to, 222

OUTSIDE OF CITY

- Living outside, officers and employees, 7

OVERTIME

- Municipal railway platform, etc., 125, 151.3 (f)

P

PARKING

- Lease of parks and squares subsurface space for, 42.2

PARKING AUTHORITY

- Retirement system membership, 158.4

PARKS

- Automobile parking stations, leases for, 42.2

PARKS—Cont'd

- Buildings on, power to erect, 42, 42.2
- Building uses restricted to recreation, 42.2
- Control and management, 42, 42.2, 42.3
- Leases of park land, 42.2, 42.3
- Taxation to support, 42.4, 78

PART-TIME EMPLOYEES

- Adjustment of salaries, 142
- Eligibles list, filling positions from, 142
- Salaries and wages, 142, 151, 151.1

PERSONAL PROPERTY

- Employees' property lost or damaged in line of duty, repair or replacement of, 151.6

PHYSICIANS AND SURGEONS

- Health service, see **Health Service**

PLAYGROUNDS

- Buildings on, power to erect, 42, 42.2
- Control and management, 42, 42.2, 42.3
- Tax levies to support, 42.4, 78

POLICE COMMISSION

- Narcotic fund, payments from, 35.8.1
- Rules and regulations restricting private activities, etc., of officers and employees, 222
- Traffic regulation, 35; and see **Traffic Bureau; Traffic Control and Regulations**

POLICE DEPARTMENT

- Accident investigation bureau, see **Accident Investigation Bureau**
- Adjustment of salaries by ordinance, 35.5.1, 35.5.2
- Bureau of criminal information, designation and salary of, 35.4, 35.5
- Chief of police—
 - inspectors appointed by, 35.3
 - narcotic fund at disposal of, 35.8.1
 - traffic bureau under, 35; and see **Traffic Bureau**
- Contingent fund for crime investigation and detection, 35.8
- Detection of crime, fund for, 35.8
- Hazardous duty pay for motorcycle officers, 35.5.2
- Intelligence unit, see **Intelligence Unit**
- Investigation of crime, fund for, 35.8
- Juvenile bureau, see **Juvenile Bureau**
- Lieutenants, salary of, 35.5.3
- Motorcycle duty, additional pay for, 35.5.2
- Narcotic fund for chief of, 35.8.1
- Other cities, salaries fixed by surveys of, 35.5.1, 35.5.2

POLICE DEPARTMENT—Cont'd

- Police officers or patrolmen—
 - private employment and activities, rules against, 222
- Salaries and wages—
 - generally, 35.5, 35.5½, 35.5.1, 35.5.2
 - assistant inspectors, 35.5.4
 - lieutenants, 35.5.3
 - officers, 35.5, 35.5.1, 35.5.2, 35.5.3
- Special services bureau, see **Bureau of Special Services**
- Surveys, fixing salaries and wages in accordance with, 35.5.1, 35.5.2
- Traffic bureau, see **Traffic Bureau**

POLICE OFFICERS

- Equipment or other personal property damaged or lost in line of duty, repair or replacement of, 151.6
- Traffic control, use for, 35

POLICE RETIREMENT

- Adjustment for persons retired or dead prior to November 8, 1955, 168.1.5.2
- Allowances and benefits—
 - adjustment, persons retired or dead prior to November 8, 1955, 168.1.5.2
 - amount of, 166(a), 168.1.2, 168.1.5.1, 168.1.5.2
 - apportionment of increase, 168.1.5.1, 168.1.5.2
 - increases for persons retired or dead prior to November 8, 1955, 168.1.5.2
- Apportionment of increase, 168.1.5.1, 168.1.5.2
- Contributions—
 - appropriations for increases, 168.1.5.1, 168.1.5.2
 - city's, increased allowances, 168.1.5.1, 168.1.5.2
 - increases for members retired or dead prior to November 8, 1955, contributions for, 168.1.5.2
 - transfers of funds for, 168.1.5.1, 168.1.5.2
- Death benefits, increase for members retired or dead prior to November 8, 1955, 168.1.5.2
- Expert witness for city, serving after retirement, 163 (a)
- Increased benefits for members retired or dead prior to November 8, 1955, 168.1.5.2
- Social security coverage, exclusion from, 165.6
- Witness for city, service after retirement, 163(a)

PRIVATE PRACTICE OR EMPLOYMENT

- Restrictions as to, 222

PRODUCE INDUSTRY

- Relocation, property transactions for, 92.1

PROFESSION

- Private practice by officers and employees restricted, 222

PROPERTY

- Employees' property damaged or lost in line of duty, repair or replacement of, 151.6
- Food industry relocation, property transactions for, 92.1

PROTEST

- Civil service examination questions and answers, 147.1

PUBLIC ADMINISTRATOR

- Attorney appointed by, salary standardization applicable to, 151.2

PUBLIC DEFENDER

- Confidential secretary for, 34.2
- Secretary for, confidential, 34.2

PUBLIC HEALTH DEPARTMENT

- Assistant director, appointment of, 61

PUBLIC UTILITIES

- Additions, financing of, 74
- Betterments, financing of, 74
- Board of supervisors—
 - capital improvements, approval of, 74

Bonds—

- capital improvements, for, 74
- Capital improvements, financing of, 74
- Extensions, financing of, 74

PUBLIC UTILITIES COMMISSION

- Agricultural properties, leasing of, 93
- Bids on leases, approval of, 93

PUBLIC WORKS DEPARTMENT

- Contracts for recreation and park facilities, award and administration, 42
- Engineering functions of recreation and parks department transferred to, 42
- Recreation facilities building contracts, administration of, 42
- Street design for traffic, complaints relating to, 35

SUPPLEMENTAL INDEX

PUBLIC WORKS DEPARTMENT—

Cont'd

- Traffic accident data, receiving copies of, 35
- Traffic bureau as cooperating with, 35
- Traffic devices, complaints relating to, 35
- Transfers of engineering functions and personnel to, 42

PURCHASER OF SUPPLIES

- Revolving fund —
 - departmental procurement methods established by purchaser, 88.2

PURCHASES

- Ordinance determining monetary limits, 88.2
- Produce market relocation, lands for, 92.1

Q

QUORUM

- Art commission, 45

R

RATIFICATION

- Remote interests, prior contracts by officers and employees having, 222.1

RATING

- Civil service examinations, see **Civil Service Examinations**

REAL PROPERTY

- Excess property, leasing of, 93, 93.1
- Leases of, see **Leases**

RECORDS

- Remote interests of officers, employees, in contracts, sales, etc., 222.1

RECREATION AND PARK COMMISSION

- Buildings, power to erect, 42, 42.2
- Efficiency, duty to organize for, 42.1
- Engineering functions, transfer to public works, 42
- Funds for improvements by, 42
- Lease of land, power as to, 42.2, 42.3
- Personnel transfers to public works, 42
- Program of high standards, policy, 42.1
- Recreation programs, policy, 42.1
- Rental of stadiums or fields, 42.3
- San Francisco unified school district, cooperation with, 42.1
- Stadiums, power to lease, 42.3
- Transfer of engineering functions and personnel to public works, 42

RECREATION AND PARK DEPARTMENT

- Automobile parking stations revenues, credited to, 42.2
- Buildings—
 - power to erect, 42, 42.2
 - use restricted to recreation purposes, 42.2
- Efficiency, organization for, 42.1
- Fund, parking revenues credited to, 42.2
- Lease of lands, power as to, 42.2, 42.3
- Parking revenues credited to, 42.2
- Program of high standards, 42.1
- Recreation program of high standards, policy, 42.1
- San Francisco unified school district, cooperation with, 42.1
- Stadiums, lease or rental of, 42.3
- Tax levy for, 42.4

RECREATION FIELDS

- Games, lease for, 42.3
- Lease by recreation and park commission, 42.2, 42.3
- Rental by recreation and park commission, 42.2, 42.3
- Special events, lease for, 42.3

REDEVELOPMENT PLANS

- Produce and related industries affected by, property for relocation of, 92.1

REDUCTION IN FORCE

- Automation causing, 156.1

REGISTRAR OF VOTERS

- Health service board elections, conduct of, 172.1.1

RELOCATION

- Displaced food industries affected by redevelopment plans, lands for, 92.1

REMOVAL OF OFFICERS AND EMPLOYEES

- Interest in city transactions as cause for, 222
- Non-civil service employees, 20, 34
- Outside activities as cause for, 222

RENTALS

- Stadiums and recreational fields, 42.3

REPAIRS

- Employees' property damaged in line of duty, 151.6

REPLACEMENT

- Employees' property lost or damaged in line of duty, 151.6

REPORTS

Actuarial reports required for health service plans, 172.1.3

RESIDENCE IN CITY

Bus operator, municipal railway, 144
Conductor on municipal railway, 144
Motorman on municipal railway, 144
Municipal railway employees, 144

RESIGNATION

Definition of resigned teacher or employee, 172.1.6
Health service membership after, 172.1.6

RESTORATION

City government, in case of disaster, 9

RETIRED PERSON

Expert witness, payment for service as, 163 (a)
Health service benefits for, 172.1.6, 172.1.11
Miscellaneous employees, post-retirement service, 163 (a), 165.2 (J)
State teachers retirement membership, withdrawal of, 165.3
Witness, payment for service as, 163 (a)

RETIREMENT

Actuarial—
equivalent, election as to, 165.3
Additional contributions to replace reduced allowances under social security provisions, 165.6(B)
Allowances and benefits—
additional contributions to replace allowances reduced under social security provisions, 165.6(B)
early retirement, option as to modification of allowance, 165.6(G)
increase for members retired prior to July 1, 1952, 165.1.4
increases for members retired prior to July 2, 1952, 165.2.1
minimum of retirement system and social security allowance, 165.6(G)
modification affecting increases in, 165.1.1, 165.1.3, 165.1.4, 165.2.1
raises for employees retired prior to July 1, 1952, 165.1.4
raises for employees retired prior to July 2, 1952, 165.2.1
reductions because of social security coverage, 165.6(A,B,C)
social security coverage as requiring reductions in, 165.6(A,B,C)
teachers benefits, cancellation upon withdrawal from system, 165.3

RETIREMENT—Cont'd

Beneficiaries—
increases in benefits affecting, 165.1.1, 165.1.3, 165.1.4, 165.2.1
modified allowance, increases in, 165.1.1, 165.1.3, 165.1.4, 165.2.1
Board of education employees withdrawing and retiring under state system, credits for, 165.4
Contributions—
additional, to replace reduced allowances under social security, 165.6(B)
appropriation for, generally, 165.1.1, 165.1.3, 165.1.4, 165.2.1
city as making, 160, 161.1, 161.2, 164, 165.1.1, 165.1.3, 165.1.4, 165.2(H) 4, 165.2(H) 5, 165.2.1
adjustment under social security coverage 165.6(I)
retroactive time of social security coverage, contributions required for, 165.6(E)
credits to school district for retirements under state system, 165.4
election as to reductions under social security coverage, 165.6(B)
increases in benefits, contributions to meet, 165.1.1, 165.1.3, 165.1.4, 165.2.1
parking authority members, 158.4
reductions to school district for retirements under state system, 165.4
reduction under social security coverage, 165.6(B-C)
retroactive time of social security coverage, contribution required for, 165.6(E)
school district—
charges against, 160
credit for retirement under state system, 165.4
social security coverage affecting, 165.6(B-E)
Disability—
allowance reductions because of social security coverage, 165.6(A)
social security coverage as reducing allowances, 165.6(A)
Early retirement, option as to modification of allowances, 165.6(G)
Expert witnesses for city, service as after retirement, 163(a)
Federal social security, see specific references this title, using key words "social security;" and see Social Security Coverage
Health service membership after, 162.1.6

RETIREMENT—Cont'd

- Increases in benefits for persons retired prior to July 1, 1952, 165.1.4
- Increases in benefits for persons retired prior to July 2, 1952, 165.2.1
- Minimum allowance under combined retirement system and social security coverage, 165.6(G)
- Modification of allowance on early retirement, 165.6(G)
- Option as to modification of allowances on early retirement, 165.6(G)
- Parking authority officers and employees, 158.4
- Raises for persons retired prior to July 1, 1952, 165.1.4
- Raises for persons retired prior to July 2, 1952, 165.2.1
- School district credits for retirement under state system, 165.4
- Service—
 - allowance reductions because of social security coverage, 165.6(A)
 - social security coverage as reducing allowances, 165.6(A)
- Social security coverage, see specific references in this title, using key words "social security coverage;" see also title **Social Security Coverage**
- State teachers retirement, withdrawal of member, 165.3
- Teachers—
 - health service participation, 162.1.6
 - resignation and retirement under state system, credits for, 165.4
 - withdrawal from system after retirement, election as to, 165.3
- Parking authority officers and employees, included, 158.4
- State system—
 - benefits, effect of, 165 (a), 165 (c), 165.4
 - credits to district, 165.4
 - health service membership after transfer to, 172.1.6
 - withdrawals and retirement under state system, credits for, 165.4
- Time service credits, parking authority members, 158.4
- Withdrawal of State Teachers Retirement System members, 165.3
- Witness for city, service after retirement, 163(a)

RETIREMENT FUND

- Reserve to meet increases, 165.1.1, 165.1.3, 165.1.4, 165.2.1
- Transfers to meet increases in benefits, 165.1.1, 165.1.3, 165.1.4, 165.2.1

RETIREMENT SYSTEM

- Adjustments because of social security coverage, power to make, 165.6(K)
- Health service participation by members of, 172.1; and see **Health Service**
- Social security coverage, adjustments required for, 165.6(K)
- State Teachers' Retirement System, withdrawal of members from City System, 165.3

REVENUES

- Automobile parking station revenues, credit to recreation and parks, 42.2

REVIEW

- Civil service examination papers, 147.1

REVOLVING FUND

- Purchase limits set by ordinance, 88.2

RULES AND REGULATIONS

- Activities, employments, etc., of officers and employees, restrictions on, 222
- Private employment and practice of officers and employees, restrictions on, 222

S

SALARIES AND WAGES

- Adjustment, police department salaries, 35.5.1, 35.5.2
- Assistant inspectors, 35.5.4
- Attorney appointed by public administrator, salary standardization applicable to, 151.2
- Basic hourly rates, municipal railway employees, 151.3 (a)
- Board of supervisors, members of, 10
- Deductions for health service, 172.1.12
- Fire department, 36.2.1
- Health service deductions from, 172.1.12
- Municipal railway employees, standardization, see **Salary Standardization**
- Part-time employees, fixing salaries of, 142, 151
- Period for payment of, 85.1
- Police department, 35.5, 35.5½ (b), 35.5.1, 35.5.2, 35.5.3, 35.5.4
- Semimonthly payment of, 85.1
- Surveys for police department, fixing in accordance with, 35.5.1, 35.5.2
- Vacation pay, computing, 151.4.2, 151.4.5

SALARY ORDINANCES

- Amendment of —
 - fire department salaries, 36.2.1
 - police department salaries, 35.5.1, 35.5.2, 35.5.3, 35.5.4

SALARY ORDINANCES—Cont'd

- Fire department compensation, 36.2.1
- Pay periods determined by, 85.1
- Police department compensation, 35.5.1, 35.5.2, 35.5.3, 35.5.4
- Police department compensation, 35.5.1, 35.5.2

SALARY STANDARDIZATION

- Attorney appointed by public administrator as subject to, 151.2
- Municipal railway employees—
 - average of other cities as maximum, 151.3 (c)
 - basic hourly rates, 151.3 (a)
 - certification of schedules of other cities, 151.3 (b)
 - effective date of rates, 151.3 (e)
 - maximum rates, when applicable, 151.3 (e)
 - other benefits, wages not including, 151.3 (g)
 - overtime for holiday work, 151.3(f)
 - trainees, rates for, 151.3
 - wage schedule not in excess of other cities, fixing of, 151.3 (c)

SALES

- Interest in city transactions prohibited, 222

SALES TAX

- Legislation and agreements, powers as to, 24.1

SALVAGE CORPS

- Days off, working on, 36
- Fire department, ranks in, 36
- Heroic conduct awards, 36
- Holidays, working on, 36
- Meritorious conduct awards, 36
- Overtime work, 36
- Salaries of officers and members in, 36, 36.2, 38.1
- Tours of duty, generally, see **Fire Department**
- Work schedules, see **Fire Department**

**SAN FRANCISCO
UNIFIED SCHOOL DISTRICT**

- Credit for employees retiring under state system, 165.4
- Health system membership, 172.1, 172.1.6; and see **Health Service**
- Retirement contribution credit for retirements under state system, 165.4

SCHOOL DISTRICT EMPLOYEES

- Social security coverage for, 165.6; and see titles **Retirement**; **Social Security Coverage**

SCORING

- Civil service examination papers, see **Civil Service Examinations**

SECRETARIES

- Confidential—
 - city attorney entitled to, 34.2
 - district attorney entitled to, 34.1
 - public defender entitled to, 34.2

SENIORITY

- Transferred personnel from recreations and parks to public works, 42
- Vacation, time for taking affected by, 151.4.4

SETTLEMENT

- See **Compromise and Settlement**

SEVERANCE

- Vacation pay in case of, 151.4.5

SHERIFF'S OFFICE

- Equipment or other personal property of employees damaged or lost in line of duty, repair or replacement of, 151.6

SIGNS

- Traffic control by use of, 35

STATE LAWS

- Claims for money or damages filed according to, 87
- Health service medical care governed by, 172.1.13

STREETS AND HIGHWAYS

- Complaints as to design for traffic, public works department as responsible for, 35
- Design for traffic, complaints to public works department, 35

**STRYBING ARBORETUM AND
BOTANICAL GARDENS**

- Director of—
 - appointment of, 41
 - qualifications for position, 41

SOCIAL SECURITY COVERAGE

- See also **Retirement**
- Additional contributions—
 - allowance reductions replaced by, 165.6(B)
 - retroactivity requiring, 165.6(E)

SOCIAL SECURITY COVERAGE—

Cont'd

Allowances—

- early retirement, modification of allowance for, 165.6(G)
- minimum of combined allowances, 165.6(G)
- reduction of retirement system allowances, 165.6(A,B,C)

Board of supervisors providing for by ordinance, 165.6

Contributions—

- additional contributions required for retroactivity, 165.6(E)
- city contributions under retirement system, adjustment of, 165.6(I)
- liability for, 165.6(D,E)
- retroactive time, contributions for, 165.6(E)
- retirement system contributions as affected by, 165.6(B-E)

Disability retirement allowance under retirement system, reduction of, 165.6(A)

Early retirement, modification of allowance for, 165.6(G)

Effective date as retroactive, 165.6(E)

Elections—

- contributions under retirement system, reduction of, 165.6(B)
- members already covered, election as to inclusion under city plan, 165.6(F)
- reducing retirement system contributions, 165.6(B)

Eligibility for, 165.6

Fire department members excluded from, 165.6

Minimum allowance under combined retirement system and social security, 165.6(G)

Municipal railway employees as included in, 165.6(F)

Numbers, plural and singular, 165.6(H)

Option as to modification of allowance on early retirement, 165.6(G)

Ordinance prescribing conditions for, 165.6

Police department members excluded, 165.6

Previous coverage, effect of, 165.6(F)

Prior coverage, effect of, 165.6(F)

Reductions—

- allowances under retirements system, 165.6(A,B,C)
- contributions under retirement system, 165.6(B)

Referendum of employees as to, 165.6(J)

Retirement system adjustments, power to make, 165.6(K)

Retroactive effect of, 165.6(E)

SOCIAL SECURITY COVERAGE—

Cont'd

Retroactive time, contributions for, 165.6(E)

School district employees included in, 165.6

Service retirement allowance under retirement system, reduction of, 165.6(A)

Words, meaning of, 165.6(H)

SQUARES

Automobile parking stations, lease of sub-surface space for, 42.2

Buildings on—

- power to erect, 42, 42.2
- use restricted to recreation, 42.2

Control and management, 42, 42.2, 42.3

Leases of land, 42.2, 42.3

Tax levy for, 42.4, 78

STADIUMS

Games, lease for, 42.3

Lease by recreation and park commission, 42.3

Rental by recreation and park commission, 42.3

Special events, lease for, 42.3

STATE LAWS

Claims procedure governed by, 87

Continuance of local government in disasters governed by, 9

SURVEYS

Police department compensation fixed in accordance with, 35.5.1, 35.5.2

SUSPENSION OF OFFICERS AND EMPLOYEES

Appeal to fire and police commission, 155

Chiefs of departments, power of, 155

T

TAXATION

Capital improvements in utilities, financing of, 74

Health service contribution fixed according to tax rate, 172.1.11

Recreation and park purposes, 42.4, 78

Sales taxes, powers as to, 24.1

Uniform sales and use taxes, power to legislate as to, 24.1

Use taxes, powers as to, 24.1

Utility capital improvements, financing of, 74

TAX SALES

Interest by officers and employees prohibited, 222

TEACHERS

Health service benefits, eligibility for, 172.1, 172.16, 172.1.11; and see **Health Service**

Social security coverage for, see **Retirement; Social Security Coverage**

State retirement system—
benefits from, 165 (a)
health service membership after transfer to, 172.16

Withdrawal from retirement system, election as to, 165.3

TEMPORARY EMPLOYEES

Health service benefits, eligibility for, 172.1.6

TENURE

Health service board members, 172.1.1

TERMS OF OFFICE

Medical director of health service system, 172.1.9

TESTIMONY

Retired persons compensated for giving, 163 (a)

TRAFFIC BUREAU

Advice to public works department, 35
Chief of police, establishment under, 35
Complaints, receiving and disposal of, 35
Plans for public works department, review of, 35

Review and recommendations relating to control devices and traffic regulation, 35

Plans for devices, traffic bureau review of, 35

TRAFFIC CONTROL AND REGULATION

Police officers employed for, 35
Review and recommendation, traffic bureau to public works department, 35
Signs, use of, 35

TRAFFIC OFFICERS

Motorcycle officers, additional pay for, 35.5.2

TRAINEES

Municipal railway employees, pay rates for, 151.3

TRANSFERS

Employees laid off due to automation, 156.1

Engineering functions of recreation and parks to public works, 42

TRANSFERS—Cont'd

Personnel of recreation and parks to public works, 42

Recreation and park engineering functions and personnel, 42

TREASURER

Health service contribution deposited with, 172.1.12

TRUSTEES

Library trustees, board, commission as successors of, 43

U

UNIFORM SALES AND USE TAXES

Legislation and agreements, powers as to, 24.1

USE TAX

Legislation and agreements, powers as to, 24.1

V

VACANCY IN OFFICE

Disaster, mayor's successor in case of, 25
Emergency, succession to mayor in case of, 25

Health service board membership, 172.1.1
Mayor's office, succession in case of disaster, 25

VACATION

Accumulation permitted, 151.4.1
Election as to accumulation, 151.4.1
Holidays, allowance for, 151.3(f), 151.4.3
Number of days, 151.4, 151.4.1, 151.4.3
Ordinances regulating, 151.4.5
Pay for, computing, 151.4.2, 151.4.5
Pro rata payment in case of severance, 151.4.5

Seniority, effect of, 151.4.4
Severance, payment in case of, 151.4.5
Time for taking, 151.4.4

W

WATER DEPARTMENT

Leases subject to administration by, 93

WITNESSES

Retired persons serving as, 163 (a)

WORDS

Masculine as including feminine and neuter, 165.6(H)

CUMULATIVE SUPPLEMENTAL DIGEST

§ 19. Powers and Duties of Boards and Commissions.

When the approval of two-thirds of the Board of Supervisors is required on any provision, two-thirds of all the members of the Board, whether absent or present at the particular meeting, must approve the measure. **San Francisco v. Western Air Lines, Inc.** (1962) 204 Cal. App. (2d) 105, 22 Cal. Rptr. 216.

§ 24. Permits and Inspections.

Cited in **San Francisco v. Superior Court** (1959) 53 Cal. (2d) 236, 347 Pac. (2d) 294, 1 Cal. Rptr. 158.

§ 35.5. Departments Under Mayor—Police Department.

Cited in **Hegarty v. Sohr** (1961) 190 Cal. App. (2d) 509, 12 Cal. Rptr. 210.

§ 35.5.1. Departments Under Mayor—Police Department.

Longevity pay rates of Los Angeles which were not automatic but were contingent upon certification that one's standard of service was satisfactory and were declared to be a privilege earned by merit and not a right were not a "basic amount of wages" as the term is used in the governing definition of "rates of compensation" expressed in this section. **Hegarty v. Sohr** (1961) 190 Cal. App. (2d) 509, 12 Cal. Rptr. 210.

§ 36.2. Departments Under Mayor—Fire Department.

Longevity pay rates of Los Angeles which were not automatic but were contingent upon certification that one's standard of service was satisfactory and were declared to be a privilege earned by merit and not a right were not a "basic amount of wages" as the term is used in the governing definition of "rates of compensation" expressed in this section. **Hegarty v. Sohr** (1961) 190 Cal. App. (2d) 509, 12 Cal. Rptr. 210.

§ 39. Board of Permit Appeals.

Failure to invoke and exhaust the administrative remedy of appeal under this section and § 24 to the Board of Permit Appeals constitutes a bar to judicial relief. **Lynn v. Duckel** (1956) 46 Cal. (2d) 845, 299 Pac. (2d) 236.

By ignoring the permit procedure established by this section and § 24 and building a roadway without permit, then suing the Director of Public Works for mandatory injunction for removal of city's obstruction to the roadway, a property owner attempts to nullify the procedure established by law, to the injury of the public, and does not come into court with "clean hands". **Lynn v. Duckel** (1956) 46 Cal. (2d) 845, 299 Pac. (2d) 236.

The Board of Permit Appeals is empowered to exercise full discretion in passing upon matters submitted to it; it is free to draw its own conclusions from the conflicting evidence before it and affirm or overrule the issuance of permits. **San Francisco v. Superior Court** (1959) 53 Cal. (2d) 236, 347 Pac. (2d) 294, 1 Cal. Rptr. 158.

Action of the Board of Permit Appeals involving issuance of a permit for an apartment building was not unconstitutional because unguided by adequate standards; the Charter and ordinances of the city fully prescribe the conditions which must be met by those who would construct apartment dwellings and specify the procedures to be followed by those who would secure permits. These conditions and procedures are the

SAN FRANCISCO CHARTER

standards which must govern the appropriate administrative agencies. **San Francisco v. Superior Court** (1959) 53 Cal. (2d) 236, 347 Pac. (2d) 294, 1 Cal. Rptr. 158.

Where the Board of Permit Appeals, in considering an application for an apartment building, held a full hearing, viewed the site, and made its independent order, such order raised the presumption that the existence of the necessary facts, based on the standards as prescribed by the Charter and applicable ordinances, interpreted and administered to promote public health, safety, comfort, convenience, and general welfare, had been ascertained and found. Its action could not be successfully attacked on the ground that such standards were lacking. **San Francisco v. Superior Court** (1959) 53 Cal. (2d) 236, 347 Pac. (2d) 294, 1 Cal. Rptr. 158.

Where the Board of Permit Appeals, acting under this section, held full hearings and received expert testimony, a presumption arose that the existence of facts necessary to support its conclusions had been ascertained and found. The Board did not act beyond its jurisdiction or abuse its discretion in ruling upon a decision of the Central Permit Bureau. **Board of Permit Appeals v. Central Permit Bureau** (1960) 186 Cal. App. (2d) 633, 9 Cal. Rptr. 83.

See also **Chas. L. Harney, Inc. v. Board of Permit Appeals** (1961) 195 Cal. App. (2d) 442, 15 Cal. Rptr. 870.

§ 50. California Palace of the Legion of Honor.

The obvious cultural and administrative requirements of the position of museum director provide legitimate basis for employment classification for the purpose of an ordinance excluding a director from the retirement system upon reappointment after resignation. **Acton, Heil, Brooks v. Henderson** (Three cases) (1957) 150 Cal. App. (2d) 1, 309 Pac. (2d) 481.

§ 51. M. H. de Young Memorial Museum.

The obvious cultural and administrative requirements of the position of museum director provide legitimate basis for employment classification for the purpose of an ordinance excluding a director from the retirement system upon reappointment after resignation. **Acton, Heil, Brooks v. Henderson** (Three cases) (1957) 150 Cal. App. (2d) 1, 309 Pac. (2d) 481.

§ 52. California Academy of Sciences.

The obvious cultural and administrative requirements of the position of museum director provide legitimate basis for employment classification for the purpose of an ordinance excluding a director from the retirement system upon reappointment after resignation. **Acton, Heil, Brooks v. Henderson** (Three cases) (1957) 150 Cal. App. (2d) 1, 309 Pac. (2d) 481.

§ 64. General Powers and Duties of Controller.

This section was not violated by the city in its agreements in connection with establishing an off-street parking facility. **Larsen v. City and County of San Francisco** (1957) 152 Cal. App. (2d) 355, 313 Pac. (2d) 959.

§ 72. Adoption of the Budget and the Appropriation Ordinance.

This section was not violated by the city in its agreements in connection with establishing an off-street parking facility. **Larsen v. City and County of San Francisco** (1957) 152 Cal. App. (2d) 355, 313 Pac. (2d) 959.

§ 82. Receipt, Custody and Deposit of Funds, Investment of Trust Funds.

This section was not violated by the city in its agreement in connection with establishing an off-street parking facility. **Larsen v. City**

and County of San Francisco (1957) 152 Cal. App. (2d) 355, 313 Pac. (2d) 959.

§ 87. Limitation on Claims and Damages.

In a personal injury action, the city was not estopped from asserting the defense of noncompliance with this section where there was no finding that the oral notice given to a city employee contained the necessary information for the city to investigate the matter and where the record implied a lack of reliance by the injured plaintiff on the city employee's statement that a delayed filing of a claim would be "all right." **Howard v. San Francisco** (1962) 205 CA 2d, 23 Cal. Rptr. 183.

§ 93. Lease of City Property.

Cited in **San Francisco v. Western Air Lines, Inc.** (1962) 204 Cal. App. (2d) 105, 22 Cal. Rptr. 216.

§ 119. Public Utility Policy.

Cited in **Market Street Railway Company v. California State Board of Equalization** (1956) 137 Cal. App. (2d) 87, 290 Pac. (2d) 20.

§ 119.1. Extension of Municipal Railway by Unification with Market Street Railway.

Cited in **Market Street Railway Company v. California State Board of Equalization** (1956) 137 Cal. App. (2d) 87, 290 Pac. (2d) 20.

§ 120. Public Utilities Commission.

A reading of this section in conjunction with §§ 121, 122 and 125 shows that the charter intended to designate and establish the airport as a public utility. **San Francisco v. Western Air Lines, Inc.** (1962) 204 Cal. App. (2d) 105, 22 Cal. Rptr. 216.

§ 121. Public Utilities Commission—General Powers and Duties of Commission.

A reading of this section in conjunction with §§ 120, 122 and 125 shows that the charter intended to designate and establish the airport as a public utility. **San Francisco v. Western Air Lines, Inc.** (1962) 204 Cal. App. (2d) 105, 22 Cal. Rptr. 216.

§ 122. Public Utilities Commission—Utility Departments and Bureaus.

A reading of this section in conjunction with §§ 120, 121 and 125 shows that the charter intended to designate and establish the airport as a public utility. **San Francisco v. Western Air Lines, Inc.** (1962) 204 Cal. App. (2d) 105, 22 Cal. Rptr. 216.

§ 123. Referendum on Any Lease or Sale of Public Property.

An off-street parking facility is not a public utility within the meaning of this section. **Larsen v. City and County of San Francisco** (1957) 152 Cal. App. (2d) 355, 313 Pac. (2d) 959.

Cited in **San Francisco v. Western Air Lines, Inc.** (1962) 204 Cal. App. (2d) 105, 22 Cal. Rptr. 216.

§ 125. Public Utilities Commission—Employments.

A reading of this section in conjunction with §§ 120, 121 and 122 shows that the charter intended to designate and establish the airport as a public utility. **San Francisco v. Western Air Lines, Inc.** (1962) 204 Cal. App. (2d) 105, 22 Cal. Rptr. 216.

§ 130. Public Utilities Commission—Rates.

This section is permissive in character. It does not demand that all users of facilities be charged equal rates, nor does it proscribe unequal rates or even give definition to the terms employed. **San Francisco v. Western Air Lines, Inc.** (1962) 204 Cal. App. (2d) 105, 22 Cal. Rptr. 216.

§ 140. Civil Service Commission.

Cited in **Murphy v. Walsh** (1958) 158 Cal. App. (2d) 675, 323 Pac. (2d) 206.

§ 141. Powers and Duties.

The rules of the Civil Service Commission made under the powers given in this section have the force and effect of law so long as they are reasonable and within the fundamental provisions of the Charter. **Murphy v. Walsh** (1958) 158 Cal. App. (2d) 675, 323 Pac. (2d) 206.

Cited in **Matthews v. Civil Service Commission** (1958) 158 Cal. App. (2d) 169, 322 Pac. (2d) 234.

§ 145. Qualifications and Tests.

Cited in **Murphy v. Walsh** (1958) 158 Cal. App. (2d) 675, 323 Pac. (2d) 206.

Cited in **Puckett v. San Francisco** (1962) 208 ACA 514, 25 Cal. Rptr. 276.

§ 146. Promotions.

This section does not place a limit on the kind of question or problem that can be propounded. It must pertain to matters concerning the duties of the department for which the examination is held. **Murphy v. Walsh** (1958) 158 Cal. App. (2d) 675, 323 Pac. (2d) 206.

Under the requirements of this section as to the subject matter of tests, the Civil Service Commission did not abuse its discretion in requiring the applicant to prepare a radio script where the subject matter of the script pertained to the duties of the position to be filled. **Murphy v. Walsh** (1958) 158 Cal. App. (2d) 675, 323 Pac. (2d) 206.

§ 148. Civil Service — Requisition, Certification and Appointment.

When substantial evidence of the unfitness of a probationary policeman, concerning his conduct prior to appointment, becomes known to the police chief and this evidence was not made available to or considered by the civil service commission at the time it placed the candidate on the eligible list, the police chief has the discretion to act on such evidence by terminating the appointment. **Puckett v. San Francisco** (1962) 208 ACA 514, 25 Cal. Rptr. 276.

§ 151. Standardization of Compensation.

Where the civil service commission certified a contract rate in March, 1955, as required under § 151.3, and in June discovered a change in conditions placing the employees under § 151, rather than in § 151.3, it was too late to proceed under § 151 for that year because of the provision that the Board of Supervisors must adopt salary schedules not later than April 1. **Miller v. San Francisco** (1959) 174 Cal. App. (2d) 109, 344 Pac. (2d) 102.

§ 154. Suspension and Dismissal for Cause.

The first sentence of this section, providing that a civil service employee shall not be removed or discharged "except for cause," is interpreted to mean that any reasonable, sufficient cause may be grounds for dismissal by the appointing officer. **Whoriskey v. San Francisco** (1963) 213 ACA 424, 28 Cal. Rptr. 833.

The general power of the appointing officer to discharge is not limited by the specified grounds that apply when charges are filed by one other than the appointing officer. The appointing officer has a wide discretion in determining the fitness of an employee to continue performing the duties required by his employment. **Whoriskey v. San Francisco** (1963) 213 ACA 424, 28 Cal. Rptr. 833.

§ 158.1. Retirement of Elective Officers.

Cited in *Carey v. Retirement Board of San Francisco* (1955) 131 Cal. App. (2d) 739, 281 Pac. (2d) 25.

§ 158.2. Retirement of Elective Officers (continued).

Cited in *Carey v. Retirement Board of San Francisco* (1955) 131 Cal. App. (2d) 739, 281 Pac. (2d) 25.

§ 158.3. Retirement—Court Employees and Attaches.

Cited in *Carey v. Retirement Board of San Francisco* (1955) 131 Cal. App. (2d) 739, 281 Pac. (2d) 25.

§ 162. Definition, Members of Fire and Police Departments.

This section was intended to exclude from § 169 pension coverage all marine engineers who were not required to meet the 35-year age limitation prescribed for regular members of the fire department. *Carrick v. San Francisco* (1962) 202 Cal. App. (2d) 402, 20 Cal. Rptr. 878.

§ 165. Miscellaneous Officers and Employees.

Since this section and § 165.2 both require employees to be members of the retirement system and there is no provision in either section permitting over-age persons to become members, such persons are not eligible for city employment under charter provisions alone. *Acton, Heil, Brooks v. Henderson* (Three cases) (1957) 150 Cal. App. (2d) 1, 309 Pac. (2d) 481.

The power conferred upon the board of supervisors by par. "a" of this section to include certain offices, departments, etc., within the retirement system includes, by implication, the power of exclusion. Exclusion of employees may be by classification. Where such employees have resigned from their positions, the section permits their reemployment. *Acton, Heil, Brooks v. Henderson* (Three cases) (1957) 150 Cal. App. (2d) 1, 309 Pac. (2d) 481.

The provision of par. "a" of this section making retirement compulsory at age 70 is qualified by the discretion vested in the board of supervisors. *Acton, Heil, Brooks v. Henderson* (Three cases) (1957) 150 Cal. App. (2d) 1, 309 Pac. (2d) 481.

This section was not expressly or impliedly repealed by § 165.2; nor is there express repeal of par. "a" of this section by § 165.2, or necessary incompatibility with it. The fact that § 165.2 sets up a different retirement system, with a different age as compulsory retirement should not be considered as an implied repeal of par. "a" of this section. *Acton, Heil, Brooks v. Henderson* (Three cases) (1957) 150 Cal. App. (2d) 1, 309 Pac. (2d) 481.

The definition of employees in § 165.2 was intended to be the same as the term is defined in this section and § 165.2 was intended to be subject to par. "a" of this section insofar as the power of the board of supervisors to determine who shall be member of the retirement system is concerned. *Acton, Heil, Brooks v. Henderson* (Three cases) (1957) 150 Cal. App. (2d) 1, 309 Pac. (2d) 481.

It is a possible and reasonable interpretation that § 165.2 affects all individuals who have not been made, constitutionally, a member of an exempt class under the power conferred by par. "a" of this section. *Acton, Heil, Brooks v. Henderson* (Three cases) (1957) 150 Cal. App. (2d) 1, 309 Pac. (2d) 481.

Cited in *Carrick v. San Francisco* (1962) 202 Cal. App. (2d) 402, 20 Cal. Rptr. 878.

§ 165.2. Retirement—Miscellaneous Officers and Employees On and After July 1, 1947.

Since this section and § 165 both require employees to be members of the retirement system and there is no provision in either section permit-

SAN FRANCISCO CHARTER

ting over-age persons to become members, such persons are not eligible for city employment under charter provisions alone. **Acton, Heil, Brooks v. Henderson** (Three cases) (1957) 150 Cal. App. (2d) 1, 309 Pac. (2d) 481.

Section 165 was not expressly or impliedly repealed by this section; nor is there express repeal of par. "a" of § 165 by this section, or necessary incompatibility with it. The fact that this section sets up a different retirement system, with a different age as to compulsory retirement should not be considered as an implied repeal of par. "a" of

§ 165. **Acton, Heil, Brooks v. Henderson** (Three cases) (1957) 150 Cal. App. (2d) 1, 309 Pac. (2d) 481.

The definition of employees in this section was intended to be the same as the term is defined in § 165, and this section was intended to be subject to par. "a" of § 165 insofar as the power of the board of supervisors to determine who shall be members of the retirement system is concerned. **Acton, Heil, Brooks v. Henderson** (Three cases) (1957) 150 Cal. App. (2d) 1, 309 Pac. (2d) 481.

It is a possible and reasonable interpretation that this section affects all individuals who have not been made, constitutionally, a member of an exempt class under the power conferred by par. "a" of § 165. **Acton, Heil, Brooks v. Henderson** (Three cases) (1957) 150 Cal. App. (2d) 1, 309 Pac. (2d) 481.

Subsection (B) cited in **Reinfeld v. San Francisco City and County Employees Retirement System** (1958) 158 Cal. App. (2d) 460, 322 Pac. (2d) 508.

Cited in **Carrick v. San Francisco** (1962) 202 Cal. App. (2d) 402, 20 Cal. Rptr. 878.

§ 168.3. Pension Provisions — Dependents of Members of Fire and Police Departments Killed in Line of Duty.

On appeal from a judgment supporting the Retirement Board's determination that the widow of a member who had retired and was found to have a service-connected disability was entitled to a pension under section 168.1.5 rather than under this section, it was appellant's burden to show that the evidence and the reasonable inferences therefrom did not support the findings of the Board. On such appeal, respondent enjoys in its favor all inferences arising from conflicts in the evidence, even though an equally reasonable adverse inference is possible. Appellant, in other words, must not only show that a finding in her favor would have been supported, but must demonstrate that such finding is compelled as a matter of law. **Cooper v. Retirement Board of San Francisco** (1955) 131 Cal. App. (2d) 804, 281 Pac. (2d) 349.

In proceedings to compel payment of a widow's pension under this section, rather than under section 168.1.5, for death of a retired member the findings of the Retirement Board that the member did not die of injury received in, or illness caused by the performance of his duty and that the widow did not sustain her burden of proving that the member died as a result of injury received in, or illness caused by performance of his duty, were sustained by the evidence where the member, a policeman who suffered a service-connected heart condition had attempted, after his retirement, to make an arrest, whereupon he was assaulted, and the medical testimony showed at most that in the legal sense the cause of his death was the over-exertion or excitement caused by the altercation. **Cooper v. Retirement Board of San Francisco** (1955) 131 Cal. App. (2d) 804, 281 Pac. (2d) 349.

The purpose of this section was to enlarge the rights of widows of firemen killed in line of duty. **Carey v. Retirement Board of San Francisco** (1955) 131 Cal. App. (2d) 739, 281 Pac. (2d) 25.

The phrase "in lieu of," as used in this section means "instead of," "in place of," "in substitution for." This section impliedly repeals section 169 (b), therefore, and provides the sole method of compensation for widows of firemen who die from injuries received in line of duty. **Carey v. Retirement Board of San Francisco** (1955) 131 Cal. App. (2d) 739, 281 Pac. (2d) 25.

Cited in **Carrick v. San Francisco** (1962) 202 Cal. App. (2d) 402, 20 Cal. Rptr. 878.

§ 169. Present Members of Fire Department.

Subdivision "b" of this section is impliedly repealed by section 168.3, and that section provides the sole method of compensation for widows of firemen who die from injuries received in line of duty. **Carey v. Retirement Board of San Francisco** (1955) 131 Cal. App. (2d) 739, 281 Pac. (2d) 25.

Even though marine engineers wear uniforms and serve on assigned watches, they are not entitled to pension coverage under § 169 unless they fulfill the definition of firemen as given in § 162. **Carrick v. San Francisco** (1962) 202 Cal. App. (2d) 402, 20 Cal. Rptr. 878.

§ 171.1. Health Service System.

Cited in **Martin v. San Francisco** (1959) 168 Cal. App. (2d) 570, 336 Pac. (2d) 239.

§ 171.1.2. Pension Provisions — Future Members of Fire Department.

Cited in **Carrick v. San Francisco** (1962) 202 Cal. App. (2d) 402, 20 Cal. Rptr. 878.

